TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 454

PEDRO AGUILAR, PETITIONER,

vs.

STANDARD OIL COMPANY OF NEW JERSEY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 12, 1942.

CERTIORARI GRANTED JANUARY 4, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 11, 1943.

—4055

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Civ. 5-108

PEDRO AGUILAR, Plaintiff-Appellant,

—against—

STANDARD OIL COMPANY OF NEW JERSEY, Defendant-Appellee

STATEMENT UNDER RULE 13

This action was commenced by the service of a summons and complaint on August 22, 1939. By notice of motion dated September 25, 1939, defendant moved to dismiss plaintiff's complaint; said motion came on to be heard before the Honorable Justice Mandelbaum on October 13, 1939, and said motion was denied. Issue was joined by the service of defendant's amended answer on March 27, 1940.

A Pre-Trial Hearing was held before Honorable John C. Knox, District Judge, on the 7th day of November, 1940, and after hearing counsel for the respective parties, the complaint was dismissed. Judgment therein was duly entered in the office of the Clerk of the Court on November 14, 1940. The plaintiff appeals from the Judgment dismissing the complaint. The Notice of Appeal was filed November 30, 1940.

There has been no arrest, bail given or property attached in this action.

That no question herein involved was referred to any commissioner, master or referee.

The plaintiff is represented by George J. Engelman.

The defendant is represented by Kirlin, Campbell, Hickox, Keating and McGrann, Esqs.

The original parties are as hereinabove set forth and there has been no change of parties or attorneys since the commencement of this action.

[fol. 2] IN DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 5-108

SEAMAN'S ACTION

PEDRO AGUILAR, Plaintiff,

—against—

STANDARD OIL COMPANY OF NEW JERSEY, Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon George J. Engelman, plaintiff's attorney, whose address is 44 Whitehall Street, New York, New York, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: August 17, 1939.

Charles Weiser, Clerk of Court. (Seal of Court.)

[fol. 3] IN UNITED STATES DISTRICT COURT

COMPLAINT

SEAMAN'S ACTION

Action Under Special Rule for Seamen to Sue Without Security and Prepayment of Fees for Enforcement of Laws of the United States; for the Protection of Health and Safety at Sea:

The plaintiff, by George J. Engelman, his attorney, complaining of the defendant, alleges the following upon information and belief:

First: That at all the times hereinafter mentioned, the above named defendant was and now is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and at all said times was and is

doing business in the State of New York with an office for the regular transaction of business in the City of New York, State of New York.

Second: That at all the times hereinafter mentioned, the above named defendant was the owner of a certain steamship called the E. M. Clark.

Third: That at all the times hereinafter mentioned the above named defendant chartered, operated, managed, controlled, provisioned, manned, supplied and was in possession and control of the said steamship E. M. Clark.

Fourth: That at all the times hereinafter mentioned the E. M. Clark was and still is employed as a merchant vessel.

Fifth: That at all the times hereinafter mentioned and more particularly from on or about March 9, 1938 to and including April 18, 1938, the plaintiff was in the employ of the defendant aboard the said steamship E. M. Clark as an Able Bodied Seaman.

Sixth: That the defendant employed the plaintiff at all the times hereinafter mentioned and more particularly from [fol. 4] on or about March 9, 1938 to and including April 18, 1938 aboard the said steamship E. M. Clark as an Able Bodied Seaman.

Seventh: That on or about April 18, 1938 the Steamship E. M. Clark was lying in navigable waters at the plant of the Mexican Petroleum Company and/or American Oil Company at Cartaret, New Jersey; that on the said date plaintiff was given leave to go ashore, that he went ashore and as he was returning to the said steamship to resume his employment aboard the said Steamship E. M. Clark and while he was in the plant and on the premises of the said Mexican Petroleum Company and/or American Oil Company, he was suddenly and without any fault on his part struck by a motor vehicle and he thereby sustained very serious and permanent personal injuries. That prior to the occurrence of the accident the plaintiff had been duly admitted on the said plant and premises and had passed through a gate leading to the said plant and premises and that it was necessary for the plaintiff to walk over said plant and premises in order to reach the ship and resume his employment.

Eighth: That by reason of the said personal injuries plaintiff has been rendered sick, sore, lame and disabled, has suffered, is suffering and will very probably suffer

great pain, agony and mental anguish for a long time to come, has been and will be prevented from attending to his work for a long time to come, has lost and will lose sums of money which he otherwise would have earned, has been obliged to undergo medical care and attention, is still undergoing the same and will be obliged to submit to the same for a long time to come and may have to pay out large sums of money for medical care and attention, and the plaintiff has been permanently injured all to his damage.

Ninth: That by reason of the said accident and the resulting injuries plaintiff, under the general maritime law, [fol. 5] is entitled to be maintained and cured at the expense of the defendant.

Tenth: That the plaintiff has spent and will be required to spend sums of money for his maintenance, care and cure all to his damage in the sum of Ten Thousand Dollars ($10,000).

Wherefore, plaintiff demands judgment against the defendant in the sum of Ten Thousand Dollars ($10,000) as the expenses for his maintenance and cure, together with the costs and disbursements of this action.

George J. Engelman, Attorney for Plaintiff, O. & P. O. Address, 44 Whitehall Street, Borough of Manhattan, City of New York.

In United States District Court

Amended Answer

Defendant, Standard Oil Company of New Jersey, for its amended answer, by its attorneys, Kirlin, Campbell, Hickox, Keating & McGrann, alleges upon information and belief as follows:

First: It admits that at the times mentioned in the complaint, it was and still is a foreign corporation, organized and existing under and by virtue of the laws of the State of Delaware.

Second: It admits the allegations contained in paragraph numbered Second of the complaint.

[fol. 6] Third: It admits that at the times mentioned in the complaint, it provisioned, manned and supplied, was in

partial possession, control, operation and management of the Steamship E. M. Clark. It denies each and every other allegation contained in paragraph numbered Third of the complaint.

Fourth: It admits the allegations contained in paragraph numbered Fourth of the complaint.

Fifth: It admits that the plaintiff was in its employ commencing March 19, 1937, and terminating on April 18, 1938 as an A. B. seaman attached to the Steamship E. M. Clark. It denies that at the time of the accident alleged in the complaint, plaintiff was in the service of or in the employ of the defendant. It denies each and every other allegation contained in paragraph numbered Fifth of the complaint.

Sixth: It admits that the plaintiff was in its employ commencing March 19, 1937 and terminating on April 18, 1938 as an A. B. seaman attached to the Steamship E. M. Clark. It denies that at the time of the accident alleged in the complaint, plaintiff was in the service of or in the employ of the defendant. It denies each and every other allegation contained in paragraph numbered Sixth of the complaint.

Seventh: It admits that on April 18, 1938, the Steamship E. M. Clark was lying in navigable waters at the plant of the Mexican Petroleum Corporation. It denies that it has any knowledge or information sufficient to form a belief thereof as to each and every other allegation contained in paragraph numbered Seventh of the complaint.

Eighth: It denies that it has any knowledge or information sufficient to form a belief thereof as to each and every allegation contained in paragraph numbered Eighth of the complaint.

Ninth: It denies each and every allegation contained in paragraph numbered Ninth of the complaint.

[fol. 7] Tenth: It denies that it has any knowledge or information sufficient to form a belief thereof as to each and every allegation contained in paragraph numbered Tenth of the complaint.

Further Answering the Complaint and as a First, Separate, Complete and Distinct Defense Thereto, Defendant Alleges on Information and Belief:

Eleventh: That prior to the commencement of this action and on or about the 10th day of January, 1939, pursuant to an agreement of settlement made between the plaintiff and defendant herein, the defendant gave to plain-

tiff, and plaintiff accepted and received from defendant, the sum of One Hundred Five ($105.00) Dollars in full settlement, satisfaction and discharge of any and all claims for injury and plaintiff's damage alleged in the complaint to have been sustained by reason of the facts therein set forth or otherwise.

Twelfth: At the time of the said payment and accord and satisfaction as aforesaid, said defendant in good faith disputed and denied its liability to plaintiff with respect to the matters alleged in the complaint.

Further Answering the Complaint and as a Second Separate, Complete and Distinct Defense Thereto, Defendant Alleges on Information and Belief:

Thirteenth: That prior to the commencement of this action and on or about the 10th day of January, 1939, plaintiff for a valuable consideration by an instrument in writing released this defendant from the alleged claim set forth in the complaint.

Wherefore the defendant demands that the complaint be dismissed with costs to the defendant as against the plain-
[fol. 8] tiff and that the court grant to the defendant such other, further and different relief as the justice of the cause may require.

Kirlin, Campbell, Hickox, Keating & McGrann, by R. Parmer, A Member of the Firm, Attorneys for Defendant, Office & P. O. Address, 120 Broadway, New York, N. Y.

In United States District Court

Order for Plaintiff to Furnish Particulars—December 8, 1939

First: State who gave plaintiff shore leave, giving his name and/or capacity.

Second: State when the plaintiff left the Steamship E. M. Clark to go ashore.

Third: State where the plaintiff went upon leaving the Steamship E. M. Clark.

Fourth: State where the plaintiff went while ashore and what he did up until the time of the alleged accident.

Fifth: State the plaintiff's regular watch hours.

Sixth: Give the date, hour and minute so nearly as may be stated at which the plaintiff claims to have been injured.

Seventh: State how the plaintiff claims the accident happened.

Eighth: State where the accident happened and whether or not it occurred upon a public street.

Ninth: State where, with relation to the Steamship E. M. Clark, the plaintiff's alleged accident occurred and give [fol. 9] the approximate distance between the place of the alleged accident and the Steamship E. M. Clark.

Tenth: Give a statement of each and every injury which it is claimed plaintiff sustained for which he claims this defendant is responsible, giving the name, location, extent and duration of each injury and which, if any, are claimed to be permanent.

Eleventh: State the amount of money it is claimed that plaintiff has expended for medical attention and medicines on account of the injuries for which he claims this defendant is responsible and to what extent he has become indebted for these items, if at all.

Twelfth: State the amount of money the plaintiff claims to be entitled to for his maintenance and cure.

Thirteenth: Give the date of commencement and the date of termination of the period for which plaintiff claims to be entitled to maintenance.

Fourteenth: Give the date upon which the plaintiff returned to work after the alleged injury; his capacity in said employment; and the name of his employer.

Fifteenth: State the permanent residence of plaintiff, giving the street, house number, town, village or city and the state (country).

Sixteenth: State the country of which plaintiff was a citizen at the time of the commencement of this action and

state whether by nativity or naturalization, and if the latter, state where and when plaintiff was naturalized.

Seventeenth: State the name and/or location of each and every hospital at which plaintiff claims to have received treatment, giving the dates during which this treatment was obtained and indicate which of the treatments were inpatient and which were outpatient.

[fol. 10] In United States District Court

Plaintiff's Bill of Particulars

Plaintiff, answering defendant's demand for a bill of particulars, alleges the following upon information and belief:

First: The captain of the vessel.

Second: About 1:00 P. M.

Third: To the City of Carteret.

Fourth: Went to a telegraph office, walked about the City of Carteret and had some good there.

Fifth: 8 to 12.

Sixth: Between 7:00 and 7:30 P. M.

Seventh: As plaintiff was inside the plant where the ship was moored and as he was walking along a roadway in the direction of the ship, he was struck by a motor vehicle.

Eighth: The accident occurred on the plant or premises of the Mexican Petroleum Corporation and or the American Oil Company at Carteret, New Jersey. The accident occurred alongside a roadway of said plant between the gate leading to the plant and the vessel. To the best of plaintiff's recollection the said roadway has no name.

Ninth: Plaintiff was injured inside the plant on the roadway leading to the ship. Plaintiff cannot be certain of the exact distance from the scene of the accident to the vessel, but to the best of his recollection it was approximately one half mile to the ship.

Tenth: Plaintiff sustained multiple contusions and abrasions, a complete comminuted fracture of the lower third

of the left femur. The fracture has resulted in over-riding, ankylosis of the left knee and marked impairment of function of the left leg and knee and a deformity of the left leg. These injuries are all permanent except the contusions and abrasions from which plaintiff recovered.

[fol. 11] Eleventh: No sum.

Twelfth: $2.50 per day from January 7, 1939, to date or the sum of $920.

Thirteenth: January 7, 1939, to November 27, 1939. November 30, 1939, to date and thereafter.

Fourteenth: Plaintiff returned to work for the McCormick S. S. Co. on November 27, 1939, at wages of $2 a day and worked until November 30, 1939.

Fifteenth: Corozal, Puerto Rico.

Sixteenth: Plaintiff was a citizen of Chile at the time of the accident and alleges that at that time he had filed papers declaring his intention to become an American citizen.

Seventeenth: Perth Amboy General Hospital from April 18, 1938, to January 7, 1939, as an in patient. U. S. Public Health Service, San Juan, Puerto Rico, from March 13, 1939, to November 7, 1939, as an out patient.

Dated, New York, January 10, 1940.

Yours, etc., George J. Engelman, Attorney for Plaintiff, O. & P. O. Address, 44 Whitehall Street, Borough of Manhattan, City of New York.

To: Kirlin, Campbell, Hickox, Keating & McGrann, Esqs., Attorneys for Defendant, 120 Broadway, New York City.

[fol. 12] In United States District Court

Narrative Statement of Agreed Facts

On April 18, 1938, the defendant's vessel, the Steamship E. M. Clark, was lying docked at the plant or premises of the Mexican Petroleum Company; defendant neither owned, operated nor controlled said plant or premises. On that day the plaintiff was in the employ of the defendant at-

tached to said vessel as a member of her crew and plaintiff obtained permission from the Master of the vessel for shore leave and he went ashore on his own personal business. In returning to the vessel from shore leave, in order to reach the vessel, he had to pass over the said plant or premises of the Mexican Petroleum Company and after he had passed through the entrance gate of said plant or premises, and while he was walking on the roadway of said plant or premises about a half mile from the ship, he was struck by a motor vehicle which was neither owned, operated nor controlled by the defendant.

[fol. 13] IN UNITED STATES DISTRICT COURT

Pretrial No. 592.

Civ. 5-108.

OPINION

Before: HON. JOHN C. KNOX, *District Judge*.

New York, November 7, 1940;

10:30 a. m.

The Court: It being conceded that the plaintiff in this action was struck by an automobile, neither under the control of the defendant nor owned by it, within the premises but at least a half mile from the ship to which this plaintiff was returning; plaintiff was a seaman on board the ship "E. M. Clark". He had absented himself therefrom for purposes of his own and returned about nine-thirty at night, walking along the pathway to the dock at which the ship was moored.

I am of the opinion that there was no liability of the defendant by reason of the injuries sustained by the plaintiff, either for indemnity or maintenance and cure. Therefore, the action is dismissed.

[fol. 14] IN UNITED STATES DISTRICT COURT

Civ. 5-108.

Calendar #592.

ORDER AND JUDGMENT

The above entitled action having come on to be heard before this Court at a pre-trial hearing held on the 7th day of November, 1940, and the parties having appeared by their respective counsel, and having entered into the record an agreed statement of the facts involved in the issues in said action, and after consideration of said facts, and upon due deliberation, it is

ORDERED AND ADJUDGED that the complaint herein be and is hereby dismissed, and it is further

ORDERED that the Clerk of this Court be and is hereby directed to enter this judgment accordingly.

Dated, New York, November 14th, 1940.

John C. Knox, U. S. D. J.

Judgment rendered this 14th day of November, 1940.

George J. H. Follmer, Clerk.

[fol. 15] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL.

SIRS:

PLEASE TAKE NOTICE that the plaintiff, PEDRO AGUILAR, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the Order and judgment made and entered herein on the 14th day of November, 1940, which dismissed the plaintiff's complaint, and from each and every part of said order and judgment which dismissed plaintiff's cause of action.

Dated, New York, November 22, 1940.

Yours, etc., George J. Engelman, Attorney for Plaintiff, O. & P. O. Address, 44 Whitehall Street, Borough of Manhattan, City of New York.

To: Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant, 120 Broadway, New York City.

[fol. 16] IN UNITED STATES DISTRICT COURT

STIPULATION SETTLING RECORD

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed by the parties.

Dated, New York, March 18, 1941.

George J. Engelman, Attorney for Plaintiff-Appellant.

Kirlin, Campbell, Hickox, Keating & McGrann, Attorneys for Defendant-Appellee.

[fol. 17] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 18] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1941

No. 307

(Argued June 5, 1942. Decided July 6, 1942)

PEDRO AGUILAR, Appellant,

v.

STANDARD OIL COMPANY OF NEW JERSEY, Appellee

Appeal from a judgment of the District Court for the Southern District of New York, dismissing the complaint in an action at law by a seaman to recover for maintenance and cure.

Before L. Hand Augustus N. Hand and Clark, Circuit Judges

George J. Engelman for the appellant.
Walter X. Connor for the appellee.

Per CURIAM:

This appeal turns upon whether a seaman may maintain a suit for maintenance and cure under the following circumstances. The ship was in port moored to a wharf, and [fol. 19] the plaintiff got leave to go ashore to attend to personal business. To go to his destination he had to cross the premises of the Mexican-Petroleum Company at which the ship was moored; and, while he was coming back after finishing his business, he was struck by a motor truck and injured, about half a mile away from the ship. The district judge held that his right to maintenance and cure extended only to injuries suffered while he was engaged upon the ship's business and dismissed the complaint.

The outlines of the seaman's right to maintenance and cure have remained fairly constant from very ancient times; until Congress sees fit to change its incidents, the courts should enforce it as it is; it has already been generously supplemented by the Jones Act (§ 688, Title 46, U. S. Code). From the earliest times it was recognized that when seamen went ashore without leave and got hurt in a drunken brawl

or the like, not only was the ship not liable but the master might discharge them. Article VI of the Laws of Oleron (30 Fed. Cas. p. 1174). In Article XVIII of the Laws of Wisbuy (30 Fed. Cas. p. 1191), the right to cure was stated to arise when the seaman was injured "in the master's or the ship's service"; but the master's power of discharge depended upon his going ashore "on his own head to be merry, and divert himself." In Article XXXIX of the Laws of the Hanse Towns (30 Fed. Cas. p. 1200), the right was defined as arising from injuries "in the ship's service"; and Article XL provided punishment for his absence "without leave." The Ordinances of Louis XIV (Articles XI and XII of Title Fourth of "Maritime Contracts," 30 Fed. Cas. p. 1209) similarly conferred the right if the injury was "in the service of the ship," but again the power to discharge was conditional upon disobedience. Thus it will be observed that originally the power to discharge the seaman and the forfeiture of his right were treated alike; but that [fol. 20] the two became distinguished in the laws of Wisbuy, and that the seaman's right was limited to injuries suffered in the ship's service. This has been the accepted rubric since then down to *Calmar S. S. Corp.* v. *Taylor*, 303 U. S. 525, 527, 528. The plaintiff is in error in supposing that Justice Story ruled otherwise in *Reed* v. *Canfield*, Fed. Cas. 11,641. In that case it is true that the mates had improperly decided to go ashore "to be merry and divert" themselves, but they had ordered the seamen to row them from the ship; and the seamen were upon the ship's service because they had no choice but to obey orders. The notion was indeed carried so far in *Meyer* v. *Dollar S. S. Lines*, 49 Fed. (2d) 1002 (C. C. A. 9), as to deny the right for injuries suffered on shipboard when the seaman was playfully wrestling while not on watch; and it may be that this is not consistent with our own decision in *Holm* v. *Cities Services Transp. Co.*, 60 Fed. (2d) 721. Be that as it may, it is not to be confused with the exception that a seaman forfeits his right to the cure of injuries suffered even on shipboard, if they are caused by his misconduct. *Lortie* v. *American-Hawaiian S. S. Co.*, 78 Fed. (2d) 819 (C. C. A. 9); *The S. S. Berwindglen*, 88 Fed. (2d) 125 (C. C. A. 1); *Barlow* v. *Pan Atlantic S. S. Corp.*, 101 Fed. (2d) 697 (C. C. A. 2). A distinction based upon the same activities of the seaman ashore and on board ship is perhaps *a priori* not

very reasonable; but it has from ancient times been true that what takes place on the ship may have different legal consequences from the same events on the land. Besides, the risks of even amusement on board ship are more contracted than those on land; and as to a seaman's private business, it can scarcely be said to be part of the ship's service in any sense. Be that as it may, with the doubtful exception of *Hogan* v. *J. M. Danziger* (1938), Amer. Mar. Cas. 685, we have found no case holding that the right [fol. 21] extends to such injuries, and a number of cases hold that it does not. *Collins* v. *Dollar S. S. Lines*, 23 Fed. Suppl. 395; *The President Coolidge*, 23 Fed. Suppl. 575; *Smith* v. *American South African Line*, 37 Fed. Suppl. 262; *Lilly* v. *United States Lines Co.*, 42 Fed. Suppl. 214; *Wahlgren* v. *Standard Oil Company* (1941), Amer. Mar. Cas. 1788.

The argument that as soon as the plaintiff had finished his business and started back to the ship, he went again into her service is untenable; the occasion for his return was the same as that for his leaving; i.e., his attention to his own business, not the ship's. *Hennessy* v. *M. & J. Tracy, Inc.*, 295 Fed. Rep. 680 (C. C. A. 4), was quite different; the seaman had to leave the ship after his discharge to be quit of the job. His position was like that of one who sleeps ashore and goes back and forth to work upon a harbor vessel; it is part of the business that he shall leave the ship at night and come back in the morning. *The Bouker No. 2*, 241 Fed. Rep. 831 (C. C. A. 2).

Judgment affirmed.

[fol. 22] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 25th day of July, one thousand nine hundred and forty-two.

Present: Hon. Learned Hand, Hon. Augustus N. Hand, Hon. Charles E. Clark, Circuit Judges.

PEDRO AGUILAR, Plaintiff-Appellant,

v.

STANDARD OIL COMPANY OF NEW JERSEY, Defendant-Appellee

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

D. E. Roberts, Clerk.

[fol. 23] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Pedro Aguilar v. Standard Oil Co. of N. J. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jul. 25, 1942. D. E. Roberts, Clerk.

[fol. 24] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 25] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—January 4, 1943

ON PETITION FOR WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Second Circuit.

The order of November 16, 1942, denying certiorari in this case is vacated, and the petition for writ of certiorari is granted. The case is assigned for argument immediately following No. 582, Waterman Steamship Corporation vs. Jones.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 46,955 U. S. Circuit Court of Appeals, Second Circuit, Term No. 454. Pedro Aguilar, Petitioner, vs. Standard Oil Company of New Jersey. Petition for a writ of certiorari and exhibit thereto. Filed October 12, 1942. Term No. 454 O. T. 1942.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 454

PEDRO AGUILAR,

Petitioner,

AGAINST

STANDARD OIL COMPANY OF NEW JERSEY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

GEORGE J. ENGELMAN,
Counsel for Petitioner.

JEFFREY PRESS, INC.

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Supreme Court of the United States

OCTOBER TERM, 1942

No.

PEDRO AGUILAR,

Petitioner,

against

STANDARD OIL COMPANY OF NEW JERSEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully prays for a writ of certiorari to review the decision of the United States Circuit Court of Appeals for the Second Circuit in the above case.

Summary Statement of the Matter Involved.

This petition seeks to review a judgment affirming a judgment of the District Court for the Southern District of New York entered on an order granting respondent's motion for a dismissal of petitioner's complaint made on a pre-trial hearing.

The action was brought by a seaman under the general maritime law on the law side of the Court for the expenses of his maintenance and cure because of personal injuries he sustained while in respondent's employ as a seaman.

The Facts.

Petitioner was employed by respondent as an Able Bodied Seaman aboard its steamship E. M. Clark. On April 18, 1938 the steamship E. M. Clark was lying in navigable waters at the plant of the Mexican Petroleum Company at Cartaret, New Jersey. On that date petitioner was given permission to go ashore and in returning from shore leave to his ship over a road which led from the gate of the plant to the ship, he was struck and injured by a motor vehicle approximately one-half a mile from his ship. Shortly prior to the occurrence, petitioner was admitted through the plant gate and onto the road on which he was injured (R. pp. 3, 4, 6, 8, 9, 10, 12).

Statement of Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on the 25th day of July, 1942.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of Congress of February 13, 1925 (U. S. C., Title 28, Section 347).

Opinions Below.

The opinion of the Circuit Court of Appeals for the Second Circuit in this case is to be found reported in 130 F. (2d) 154.

The District Court's opinion is set forth in the transcript of Record (R. p. 13) and is not reported.

The Question of Law.

In affirming the judgment of the District Court the Circuit Court of Appeals decided that a seaman who is injured on the means of ingress to his ship (the plant where she lies) while returning to her from shore leave is not entitled to maintenance and cure.

Petitioner respectfully contends that this rule of law pronounced by the Circuit Court of Appeals is not supported by the authorities cited except for two decisions, each by a court of original jurisdiction, which fail to analyze the problem presented.

The decision of the Circuit Court squarely reverses the classic case of *Reed* v. *Canfield* (C. C.), 20 Fed. Cas. 426 (Cas. No. 11,641) and pronounces a rule of law sharply in conflict with rules of Maintenance and Cure law pronounced by this Court in *Calmar Steamship Corp.* v. *Taylor*, 303 U. S. 525, 82 L. Ed. 993.

Reasons for Allowance of the Writ.

1. The Circuit Court of Appeals for the Second Circuit has decided an important question of Federal Law which has not been, but should be settled by this Court.

2. The Circuit Court of Appeals for the Second Circuit has decided a question of law of widespread importance to seamen and to shipowners and operators, in a way probably untenable and in conflict with established judicial authority and principle.

3. The decision is squarely contrary to the decision of the Circuit Court in *Reed* v. *Canfield* (supra, p. 3); it is probably in conflict with the decision of this Court in *Calmar Steamship Corp.* v. *Taylor* (supra, p. 3) and in any event it involves the interpretation of that decision;

it also is in conflict with settled principles of law laid down by this Court and Circuit Courts of Appeal.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari issue to review the decision below.

PEDRO AGUILAR,

By GEORGE J. ENGELMAN,
Counsel for Petitioner.

Dated, New York, October 8, 1942.

I hereby certify that I have examined the foregoing petition, and in my opinion it is well founded and entitled to the favorable consideration of the Court and that it is not filed for the purpose of delay.

GEORGE J. ENGELMAN.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1942.

No.

PEDRO AGUILAR,

Petitioner,

against

STANDARD OIL COMPANY OF NEW JERSEY,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

POINT I.

A seaman injured on the plant at which his ship is docked while returning to the ship from shore leave, is entitled to maintenance and cure.

The seaman's right to maintenance is an ancient one. The general rule that the right to maintenance and cure arises out of a disability sustained in the "service of the ship" was enunciated in ancient maritime codes and laws. 30 Fed. Cas. 1174. The same general rule has been pronounced by our Courts. *Reed* v. *Canfield* (C. C.) 20 Fed. Cas. 426 (Cas. No. 11,641); *The A. Heaton* (C. C.) 43 Fed. 592; *The Osceola,* 189 U. S. 158, 47 L. Ed. 760. And the rule has been liberally interpreted. *Calmar Steamship Corp.* v. *Taylor* (supra, p. 3).

A. Where the Disability Is Sustained Aboard Ship.

However, the disability need not arise out of an act of labor in behalf of the ship. *Holm* v. *The Cities Service Transp. Co.* (C. C. A. 2) 60 F. (2d) 721; there the seaman was injured while off duty walking over a deck. The right to maintenance and cure for any disability sustained aboard ship during the term of employment has never been questioned except where vice, misconduct or dangerous sport, for one's own amusement, is the cause. *Meyer* v. *Dollar Steamship Line* (C. C. A. 9) 49 F. (2d) 1002.

B. Where the Disability Is Not Sustained Aboard Ship.

(1) While on Duty.

Where the disability arises out of an act of labor performed off the ship but while on duty the seaman comes under the protection of the rule. The *Montezuma* (C. C. A. 2) 19 F. (2d) 355. There the seaman was working on ship's business on the deck alongside of which the vessel lay when misfortune befell him.

(2) Where the Disability Arises Out of an Accident Occurring on the Plant Where the Seaman's Vessel Lies While He Is Returning to Her From Shore Leave.

The right of a seaman to maintenance and cure for an injury sustained while returning to his vessel from shore leave has been presented to our Courts on few occasions. The Circuit Court in its opinion below stated that petitioner was in error in supposing that the classic case of *Reed* v. *Canfield* (supra, p. 3) supported our contention; we respectfully urge that the Circuit Court misunderstood that case. There the mates improperly took shore leave,

ordered the seamen to row them from the ship and upon arriving on shore ordered them to return to the ship in a half hour; instead libelant overstayed his allotted time and when he finally attempted to row to his ship due to a change in the wind he was blown off his course and suffered injuries from the cold. While the libelant was obliged to row his officers ashore his injury was probably due as stated in *Ringgold* v. *Crocker*, 20 Fed. Cas. 813 (Cas. No. 11,843) to "over-staying the time limited them, and that misconduct probably led to the injury; as a sudden change of weather, occurring subsequent to the termination of the leave of absence, prevented the boat reaching the ship, and caused the exposure which resulted in libelant's being frozen and disabled". Once the allotted shore leave expired then libelant was no longer ashore because of the conduct and orders of the mates, he was ashore not only for his own purposes but in violation of orders; the case establishes a broader rule than necessary to support our contention. There Mr. Justice Story said:

> "Another objection is, that the maritime law applies only to sickness, and accidents, and injuries occurring in the ship's service during the voyage abroad, and not, when she is in the home part, either at the commencement or termination of her voyage. But I know of no such qualification ingrafted upon the rule of the maritime law. It embraces all sickness, and all injuries, sustained in the service of the ship, and *while the party constitutes one of her crew*, without in the slightest manner alluding to any difference between their occurring in a home or foreign port, upon the ocean, or upon tide-waters." (Italics mine.)

The only other authorities directly in point are the decisions of lower Courts which fail to probe the subject matter. *Hogan* v. *J. M. Danziger* (1938 AMC 685) sustains our position while *Lilly* v. *United States Lines Co.*,

42 F. Supp. 214, and *The President Coolidge*, 23 F. Supp. 575, are contrary.

In the light of this paucity of authority, judicial decision (1) on the question whether the use of the plant where petitioner was injured was a necessary incident of his employment and (2) whether petitioner was acting in the course of his employment at the time of the occurrence should answer the problem presented here. For if the use of the plant was a necessary incident of petitioner's employment and if petitioner while walking over it was acting in the course of his employment then most certainly petitioner was engaged "in the service of the ship".

A seaman is engaged in the course of his employment while going to or leaving his ship over the "only practicable route of immediate ingress and egress". *T. J. Moss Tie Co.* v. *Tanner* (C. C. A. 5), 44 F. (2d) 928; there a seaman employed on a barge proceeded ashore by means of a sling on another vessel lying alongside the barge and suffered injuries resulting in his death when the sling broke. The Court said:

> "As a general rule an employee is deemed to be in the course of his employment while going to or from his place of work by the only practicable route of immediate ingress and egress."

The "route of immediate ingress and egress" may cover extensive distances. *Bailey* v. *Texas Co.* (C. C. A. 2) 47 F. (2d) 153; and it has been extended to the entire yard of a railroad, the size of which was probably comparable to the plant on which appellant was injured. *Erie R. R. Co.* v. *Winfield*, 244 U. S. 170, 61 L. Ed. 1057; there a railroad employee employed on an engine finished his work, left his engine and was injured on his way home while walking over the carrier's yard. This Court said:

> "In leaving the carrier's yard at the close of his

> day's work the deceased was but discharging a duty of his employment. See North Carolina R. R. Co. v. Zachary, 232 U. S. 248, 260. Like his trip through the yard to his engine in the morning, it was a necessary incident of his day's work and partook of the character of that work as a whole, for it was no more an incident of one part than of another."

The fact that respondent did not own the premises on which petitioner was injured does not take petitioner's conduct out of the course of his employment for there was no other means of ingress to the ship. In *Cudahy Packing Co.* v. *Parramore*, 263 U. S. 418, 68 L. Ed. 366, the employee was proceeding by automobile to his employer's plant over railroad tracks which provided the only practicable route to the plant when the automobile was struck by a train and the employee was killed. This Court held, that the conduct of the employee was such that the occurrence came within the meaning of the statutory compensable term "arising out of or in the course of his employment", sustained the award and said:

> "* * * The liability is based, not upon any act or omission of the employer, but upon the existence of the relationship which the employee bears to the employment because of and in the course of which he has been injured. And this is not to impose liability upon one person for an injury sustained by another with which the former has no connection; but it is to say, that it is enough if there be a causal connection between the injury and the business in which he employs the latter—a connection substantially contributory, though it need not be the sole or proximate cause."

The proximity of the premises to the place of work and the consent of the employer to their use by the employee in going to and from work, make them for purposes of

such use "in practical effect a part of the employer's premises." *Bountiful Brick Company* v. *Giles*, 276 U. S. 154, 72 L. Ed. 507; there the employee was injured outside his employer's premises while walking along railroad tracks on his way to work when injured, this Court held that the accident arose "out of and in the course of the employment" and said:

> "If the employee be injured while passing, with the expressed or implied consent of the employer, to or from his work by a way over the employer's premises or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment as much as though it had happened while employee was engaged in his work at the place of its performance."

The rules pronounced by this Court in the foregoing *Parramore* and *Giles* cases involving shore servants are in accord with and are substantially the same as those laid down in *T. J. Moss Tie Co.* v. *Tanner* (supra, p. 8), *Hennessy* v. *M. & J. Tracy, Inc.* (C. C. A. 4), 295 Fed. 680, and *Wong Bar* v. *Suburban Petroleum Transport Inc.* (C. C. A. 2) 119 F. (2d) 745, which involve seamen. In the *Hennessy* case the seaman terminated his employment before quitting his ship and in leaving by means of the ship's gangway he was injured; his right to maintenance and cure was affirmed. In the *Wong Bar* case a seaman applied for work in the morning, was told he was not needed and in leaving the ship by means of its ladder he was injured: The Court said:

> "An employee continues in the course of his employment until he has left his place of employment; hence in leaving the tug both Seabrook and Wong Bar were acting in the course of their employment."

The Circuit Court below attempted to distinguish the *Hennessy* case and cases where seamen are employed on harbor vessels, sleep ashore and return to work in the morning, by stating that in such cases "it is part of the business that he shall leave the ship at night and come back in the morning." But where a seamen is employed on a voyage rather than as a day worker it is "part of the business" that while his ship is in port he will from time to time be given shore leave which is a necessary incident of his employment; his conduct in returning to his ship from shore leave appears to be more a "part of the business" of the employment than the conduct of a harbor working seaman in going to work in the morning, for the latter is not bound to a ship, whereas the former is because his contract of employment involves:

> "* * * to a certain extent, the surrender of his personal liberty during the life of the contract." Robertson v. Baldwin, 165 U. S 275, 41 L. Ed. 715.
>
> "A sailor cannot, like other workmen, divest himself of all his responsibilities to the company for which he works when his work for the day is done." Meyer v. Dollar Steamship Line (supra, p. 6).

> "These principles are that a seaman is to an extent bound to his ship in a kind of personal indenture, and the ship is in return bound to him for his wages, his maintenance and cure. That the obligations of this indenture are mutual, and continue *through the term of the employment*, and the question of how many particular voyages are made during that term, is wholly immaterial, * * *" Enochasson v. Freeport Sulphur Co. (D. C.), 7 F. (2d) 674. (Italics mine.)

> "The defendant's grant of shore leave implied a requirement that the employee should return. Masters

> of vessels have seemingly a peculiar control over the members of the crew, and even upon land." Holliday v. Merchants' & Miners' Transp. Co. (Georgia Court of Appeals), 32 Ga. App. 567, 124 S. E. 89.

That physical attachment to the ship is not a necessity in order to invoke the right to maintenance and cure is illustrated by illness cases. Where the disability arises out of an illness, the latter need not begin aboard ship or during the term of the seaman's employment and it need not be caused by the employment, it is sufficient that it result in disability during the term of the seaman's employment. *Neilson* v. *Laura* (D. C.) 17 Fed. Cas. 1305 (Cas. No. 10,092); *The Bouker No. 2* (C. C. A. 2), 241 Fed. 831.

In the *Bouker* case the seaman was employed for about two months on a harbor tug which made no more than two trips a day in good weather and about every week he would leave the tug and go home for brief periods; he declared he was too ill to work while aboard the tug, but the opinion does not indicate when or where his illness began; the Court said:

> "We may state our opinion that a seaman 'falls sick, or is wounded, in the service of the ship', if such misfortune attacks him while he is attached to the ship as part of her crew. It is not necessary that the wound or illness should be directly caused by some proven act of labor; it is enough that he was, when incapacitated, subject to the call of duty as a seaman, and earning wages as such."

In *Calmar Steamship Corp.* v. *Taylor* (supra, p. 3), the disability arose out of Buerger's disease, a condition which pre-existed the seaman's employment and which was not aggravated by it, but which resulted in disability during the employment; there this Court sustained the seaman's

right to maintenance and cure, reviewed the law on the subject at great length, and said:

> "* * * nor is it restricted to those cases where the seaman's employment is the cause of the injury or illness.
>
> * * * It is true that in most of these cases the efficient cause of the injury or illness was some proven act of the seaman in the service of the ship, but there are others in which it was deemed enough that he was incapacitated when subject to the call of duty as a seaman, and that his incapacity continued after the voyage had ended."

We conclude from the opinion of this Court, that it is sufficient that at the time misfortune strikes, the seaman is employed as a member of the crew whereby he is contractually attached * to his ship and made "subject to the call of duty as a seaman" during the entire term of his employment. This is not to say that there can be a recovery where vice, misconduct or dangerous activity for one's own amusement is the cause and perhaps the seaman's activity ashore while enjoying shore leave before returning to his ship falls within the exception. But once the seaman has indicated that he has quit the enjoyment of shore leave by passing onto the means of ingress to his ship, then all question as to his attachment to his ship is removed and his conduct—returning to his ship so that he may serve her—becomes an act of labor on her behalf. Can our law deny the right to maintenance and cure under such circumstances, while granting it, to those who are injured while off duty and engaged in their own activities, simply because they are aboard ship, and to those who came aboard tainted with a disease which produces disability some time during the employment?

---

*See authorities (supra, pp. 11-12) where the rights and obligations arising out of the seaman's contract are set forth.

CONCLUSION.

For the reasons stated, and on the authority of the cases cited, it is respectfully submitted that the petition should be granted.

GEORGE J. ENGELMAN,
Counsel for Petitioner.

No. 454

Supreme Court of the United States

PEDRO AGUILAR,

Petitioner,

against

STANDARD OIL COMPANY OF NEW JERSEY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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Supreme Court of the United States

PEDRO AGUILAR,
Petitioner,

against

STANDARD OIL COMPANY OF NEW JERSEY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

STATEMENT.

The petitioner was a seaman attached to the Steamship *E. M. Clark* owned by the respondent. While he was ashore on his own personal business, he was struck by an automobile and injured. The accident took place at the plant of a petroleum company which respondent neither owned, operated nor controlled. Respondent did not own, operate or control the automobile which struck the petitioner. Petitioner was returning to the vessel and was about a half mile from it when the accident occurred.

The District Court dismissed the suit at a pre-trial hearing (Record, page 12). 1940 A. M. C. 1577, not otherwise reported.

The petitioner appealed to the Circuit Court of Appeals which affirmed the judgment below. 130 F. (2d) 154.

The gist of the circuit court's opinion was as follows (Record, page 20):

> "• • • with the doubtful exception of *Hogan* v. *J. M. Danziger* (1938), Amer. Mar. Cas. 685, we have found no case holding that the right extends to such

injuries, and a number of cases hold that it does not. *Collins* v. *Dollar S. S. Lines*, 23 Fed. Suppl. 395; *The President Coolidge*, 23 Fed. Suppl. 575; *Smith* v. *American South African Line*, 37 Fed. Suppl. 262; *Lilly* v. *United States Lines Co.*, 42 Fed. Suppl. 214; *Wahlgren* v. *Standard Oil Company* (1941), Amer. Mar. Cas. 1788.

"The argument that as soon as the plaintiff had finished his business and started back to the ship, he went again into her service is untenable; the occasion for his return was the same as that for his leaving; i. e., his attention to his own business, not the ship's. *Hennessy* v. *M. & J. Tracy, Inc.*, 295 Fed. Rep. 680 (C. C. A. 4), was quite different; the seaman had to leave the ship after his discharge to be quit of the job. His position was like that of one who sleeps ashore and goes back and forth to work upon a harbor vessel; it is part of the business that he shall leave the ship at night and come back in the morning. *The Bouker No. 2*, 241 Fed. Rep. 831 (C. C. A. 2)."

The Issue.

The sole issue before the court is whether a seaman who was injured while he was one-half a mile away from the ship, while ashore on his own personal business, can impose upon his employer the cost of his maintenance and cure.

POINT I.

IT IS THE ANCIENT AND UNIVERSAL RULE THAT A SEAMAN INJURED ASHORE, WHILE THERE FOR PERSONAL BUSINESS, MAY NOT RECOVER FROM THE SHIPOWNER THE COST OF HIS MAINTENANCE AND CURE.

Early American cases have accepted the ancient codes and have founded the American doctrine of maintenance and cure on them. The Supreme Court of the United States

has accepted them. *The Osceola*, 189 U. S. 158. More recently, they have been recognized and applied in *Barlow* v. *Pan Atlantic S. S. Corporation et al.* (C. C. A. 2) 101 F. (2d) 697 and *The Berwindglen* (C. C. A. 1) 88 F. (2d) 125.

All of these codes limit the shipowner's obligation to pay maintenance and cure to cases in which the injury or illness was suffered in the service of the ship, meaning while on the ship, or ashore on ship's business.

The Laws of Oleron, Article VI (30 Fed. Cas. p. 1174).

The Laws of Hanse Towns, Article XXXIX (ibid. p. 1200).

The Marine Ordinances of Louis XIV, Title Fourth, Article XI, XII (ibid. p. 1209).

The Laws of Wisbuy, Article XVIII (ibid. p. 1191), which is as follows:

> "A mariner being ashore in the master's or the ship's service, if he should happen to be wounded, he shall be maintained and cured at the charge of the ship: but if he goes ashore on his own head to be merry, and divert himself, or otherwise, and happens to be wounded, the master may turn him off; and the mariner shall be obliged to refund what he has received, and besides to pay what the master shall be forced to pay over and above to another whom he shall hire in his place."

The foregoing rules have been invoked to deny seamen recovery for the cost of maintenance and cure where their injury was due to intoxication, *The Berwindglen, supra, Barlow case, supra, Lortie* v. *American-Hawaiian Steamship Company*, (C. C. A. 9) 78 F. (2d) 819; venereal disease or gross acts of indiscretion, *The Alector*, 263 Fed. 1007, *Chandler* v. *The Annie Buckman*, 5 Fed. Cas. 449 (Case No. 2,591a); a personal fight, *Lortie* v. *American Hawaiian Steamship Company, supra; Brock* v. *Standard Oil Com-*

pany of New Jersey, 33 F. Supp. 353; horseplay on board ship, *Meyer* v. *Dollar Steamship Line*, 49 F. (2d) 1002; playing baseball ashore, *Collins* v. *Dollar Steamship Lines, Inc. Limited*, 23 F. Supp. 395; willful misconduct, *Oliver* v. *Calmar S. S. Co.*, 33 F. Supp. 356; a motorcycle accident while returning from shore leave, *Smith* v. *American South African Line, Inc.*, 37 F. Supp. 262; riding in a truck away from the ship on personal business, *Wahlgren* v. *Standard Oil Company of New Jersey*, 1941 A. M. C. 1788; a fall off a dock to which his ship was moored during a blackout, after he returned from shore leave, *Lilly* v. *United States Lines Company*, 42 F. Supp. 214 and finally, in pursuit of a personal matter, *The President Coolidge*, 23 F. Supp. 575.

Reed v. *Canfield*, 20 Fed. Cas. 426 (Case No. 11,641) is cited as authority by petitioner. However petitioner overlooks the fact that the seaman, in that case, was in the performance of service to his ship at the time the injury occurred. Previously, the seaman, pursuant to orders, had rowed the ship's mates from the vessel's anchorage to shore, in the ship's rowboat. The injury occurred when he and fellow seamen were rowing the boat back to their ship. The issue was whether the shipowner had the burden of the seaman's maintenance and cure when the misfortune befell the seaman at a "home port". The contention which the petitioner makes here, viz.: that maintenance is payable when the injury occurs while ashore for personal business, was not even mentioned.

However, the language of Judge Story bears upon the issues in the present case. He said at page 428:

> "* * *. Lord Tenterden, in his excellent treatise on Shipping, lays it down generally, 'that by the ancient marine ordinances, if a mariner falls sick during the voyage, or is hurt in the performance of his duty, he is to be cured at the expense of the ship;

but not, if he receives an injury in the pursuit of his own private concerns.' And he is fully borne out in this statement by the language of the ordinances cited by him on this occasion. * * *." (Italics ours.)

The test of whether or not a seaman is in the service of a ship was carefully discussed in the *Meyer* case, *supra*, where the injury was due to "horseplay" on the ship. The court said, page 1003:

> "The phrase 'in the service of the ship,' as applied to ordinary seamen, is closely analogous to the phrase 'in the line of duty,' as applied to soldiers or sailors in the service of the United States. The differences in the status of an ordinary seaman, for example, and that of a sailor are obvious at once, but there is a similarity in the narrow employer-employee relationship in both cases.
>
> "'Line of duty' is defined as follows: 'A person in the active service and submitting to its rules and regulations is, in general, in the line of duty.' Naval Courts and Boards, chapter XII, §1022.
>
> "An injury suffered or a disease contracted by a sailor is considered to have been 'in the line of duty' 'unless it is actually caused by something for which he is responsible which intervenes between his service or performance of duty and the injury or disease. He will be responsible for an intervening cause if (1) it consists of his own wilful misconduct, or (2) it is something which he is doing in pursuance of some private avocation or business, or (3) it is something which grows out of relations unconnected with the service or is not the logical incident of provable effect of duty in the service.' *Ibid.*"

The petitioner does not mention *Angco et al.* v. *Standard Oil Company of California* (C. C. A. 9), 66 F. (2d) 929, which he was unable to successfully distinguish below. The

court there describes the status of a seaman on shore leave as follows, page 930:

> "When Warner left the ship at Kahului he was off duty, upon pleasure bound, and was beyond the scope of his employment. Unless some unforeseen emergency arose he would not again come within the scope of his employment until he returned to the vessel. He was under no instructions to perform any service in any way connected with his employment; his sole responsibility, to return to his ship before she sailed, was a personal one. • • •"

In the *Collins* case, *supra*, the seaman was injured ashore. The Court, after stating that the doctrine of charging the shipowner with a seaman's maintenance and cure should be liberally applied, said, page 397:

> "• • •. It is reasonable and logical to say that if injured in the ship's service the seaman shall be cared for by the ship. To extend the obligation of the ship beyond this so as to require it to provide maintenance and cure for one who was injured on shore while engaged in his personal affairs would be to place an unfair burden upon the ship and would relieve the seaman of the risk that he himself should properly assume. I find no authority which would justify recovery of maintenance and cure by the libelant."

Petitioner argues that his accident should be considered as having occurred "in the service of the ship" because an accident in similar circumstances to a shore worker would have been within state compensation laws. There, the test is whether the accident "arose out of and in the course of the employment". He says (Brief, page 10), that there are three cases involving seamen where the maritime law of maintenance and cure was held to be based on the same rule

as modern compensation laws. Of the three cases cited, two involved injuries which occurred to the seamen while actually aboard vessels, *Hennessey* v. *M. & J. Tracy, Inc.*, 295 Fed. 680 and *Wong Bar* v. *Suburban Petroleum Transport Inc.*, 119 F. 2d 745. The third case, *T. J. Moss Tie Co. et al.* v. *Tanner, et al.*, 44 F. 2d 928 did not involve a seaman, but a longshoreman, who was riding on a sling suspended from a boom of a ship. His injury was held to "arise out of and in the course of his employment" under the applicable compensation act.

There is nothing in these cases which supports the petitioner in his statement that the courts have held that the phrase "in the service of the ship" as applied to seamen has the same meaning as the phrase "arising out of and in the course of his employment" as applied to a shore worker.

Workmen's compensation rights furnish no analogy to maintenance and cure. The two spring from entirely different sources. Workmen's compensation is statutory and gives an injured employee part of his wages and prompt medical attention without regard to whether negligence was a causative factor in the accident. On the one hand, it requires the employer to pay a portion of the wages for temporary disability, scheduled amounts for permanent disability and provide the medical attention and, on the other hand, deprives the employee of the right to sue his employer for indemnity. There was a compromise of the rights of the parties but with favor to the employee. This was just and intended to put upon the industry the cost of injury to the employees therein. To carry out the beneficial purposes of the law, it was generously interpreted to extend to situations beyond the actual course and place of work. The cases cited by the petitioner in his brief are such cases.

Such cases have nothing in common with maintenance and cure, which has a historical background of entirely dif-

ferent implication. As the Circuit Court observed (Record, pp. 19-20):

> "* * *. A distinction based upon the same activities of the seaman ashore and on board ship is perhaps *a priori* not very reasonable; but it has from ancient times been true that what takes place on the ship may have different legal consequences from the same events on the land. Besides, the risks of even amusement on board ship are more contracted than those on land; and as to a seaman's private business, it can scarcely be said to be part of the ship's service in any sense. * * *".

One of the results of the historical background of maintenance and cure is that a seaman's right to indemnity for negligence is not restricted. This was so even before the Jones Act (46 U. S. C. 688). On the other hand, the social purpose behind modern compensation acts requires such restriction.

The Circuit Court referred to this preferred status of seamen as follows (Record, page 18):

> "The outlines of the seaman's right to maintenance and cure have remained fairly constant from very ancient times; until Congress sees fit to change its incidents, the court should enforce it as it is; it has already been generously supplemented by the Jones Act (688, Title 46, U. S. Code)."

Accordingly, Workmen's Compensation is allowed wherever the accident arises out of and in the course of the employment, but maintenance and cure is limited to cases where the injury or illness arose "in the service of the ship". A seaman who is ashore for his own pleasure is not "in the service of the vessel" nor is he "subject to the call of duty". Even were this the case where the broad rule of Workmen's Compensation was applicable, viz.: "arising out of and in

the course of his employment", this injury would not come within such a rule. Here, there was no necessity for the seaman to go ashore. He had his home aboard the vessel.

As the Circuit Court of Appeals pointed out, there is a distinction between those cases where an employee is required to sleep ashore and the cases where he sleeps on and makes his home aboard his vessel. If it could be said that a seaman who is required to sleep ashore is still engaged upon his employment while he is going back and forth, there is no justification for a similar statement concerning an employee who is provided with sleeping accommodations aboard the vessel. His employer has no interest whatever in his going back and forth to shore upon personal errands of pleasure.

The petitioner seeks to avoid the effect of these adverse decisions in two ways. First, he refers to the scene of the accident, which was a half a mile away from the vessel, as a "means of ingress" to the ship (Petition, p. 3). He says that when the seaman started home, he passed on to the "means of ingress to his ship" (Brief, p. 13).

He also adopts a phrase from a workmen's compensation case involving a longshoreman, whom he calls a seaman, to imply that it has some application in the case at bar (Brief, page 10). *T. J. Moss Tie Co. et al.* vs. *Tanner et al., supra.* The phrase is "the route of immediate ingress and egress". The petitioner says that an immediate ingress and egress may cover "extensive distance".

However, the blunt fact is that the petitioner was a half a mile away from the ship when he was injured and that fact cannot be changed by referring to it as "a means of access" or as a "route of immediate ingress and egress."

The second device which the petitioner uses to escape the weight of authority against him is to erroneously assert that the ancient case of *Reed* v. *Canfield, supra,* involved an

injury to a seaman who had gone ashore for pleasure and has been squarely reversed by the decision of the Circuit Court of Appeals in this case.

The fact was that in *Reed* v. *Canfield, supra,* the libelant, when injured, was actually engaged in carrying out orders issued to him by the mates. He was in the ship's rowboat on the way back to his vessel. He had gone ashore by order of the mates for the express purpose of rowing the mates ashore. The petitioner is in error when he states that libelant had "overstayed his allotted time". The specific finding by the lower court, which was not disturbed on appeal, was that the libelant had not overstayed his leave. *Canfield* v. *Reed,* 5 Fed. Cas. 9 (Case No. 2,381) at page 10. The opinions in both courts not only do not support the petitioner's statements but there is nothing in them which in any way impairs the ancient and modern authority which denies maintenance and cure to a seaman who is injured while on shore on his own personal business.

These cases directly hold that when a seaman goes ashore for his own pleasure, he is not in the service of the ship. Such a seaman is not "subject to the call of duty". Indeed, he has deliberately placed himself in a position where he cannot hear the call of duty and has done it for purposes of his own pleasure. If duty called him, he could not be found.

POINT II.

THE PETITION SHOULD BE DISMISSED.

Respectfully submitted,

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Attorneys for Respondent.

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 454.

PEDRO AGUILAR,

Petitioner,

against

STANDARD OIL COMPANY OF NEW JERSEY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR STANDARD OIL COMPANY OF NEW JERSEY, RESPONDENT.

WALTER X. CONNOR,
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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR STANDARD OIL COMPANY OF NEW JERSEY, RESPONDENT.

STATEMENT.

The petitioner was a seaman attached to the Steamship *E. M. Clark* owned by the respondent. While he was ashore on his own personal business, he was struck by an automobile and injured. The accident took place at the plant of a petroleum company which respondent neither owned, operated nor controlled. Respondent did not own, operate or control the automobile which struck the petitioner. Petitioner was returning to the vessel and was about a half mile from it when the accident occurred.

The District Court dismissed the suit at a pre-trial hearing (Record, pages 10-11). 1940 A. M. C. 1577, not otherwise reported.

The petitioner appealed to the Circuit Court of Appeals which affirmed the judgment below. 130 F. (2d) 154.

On November 16, 1942, an order was entered by this court denying certiorari but this order was vacated and certiorari granted on January 4, 1943. At the same time, in *Waterman Steamship Corporation* v. *Jones*, No. 582, certiorari was granted from a decision of the Third Circuit which allowed a seaman maintenance for injuries sustained while ashore on his own business. The decision in the Circuit Court in the *Jones* case is found in 130 F. 2nd 797.

The gist of the decision of the Second Circuit in the *Aguilar* case, denying petitioner maintenance on account of injuries sustained ashore while there for personal business, was as follows (Record, page 20):

> "* * * with the doubtful exception of *Hogan* v. *J. M. Danziger* (1938), Amer. Mar. Cas. 685, we have found no case holding that the right extends to such injuries, and a number of cases hold that it does not. *Collins* v. *Dollar S. S. Lines*, 23 Fed. Suppl. 395; *The President Coolidge*, 23 Fed. Suppl. 575; *Smith* v. *American South African Line*, 37 Fed. Suppl. 262; *Lilly* v. *United States Lines Co.*, 42 Fed. Suppl. 214; *Wahlgren* v. *Standard Oil Company* (1941), Amer. Mar. Cas. 1788.
>
> "The argument that as soon as the plaintiff had finished his business and started back to the ship, he went again into her service is untenable; the occasion for his return was the same as that for his leaving; i. e., his attention to his own business, not the ship's. *Hennessy* v. *M. & J. Tracy, Inc.*, 295 Fed. Rep. 680 (C. C. A. 4), was quite different; the seaman had to leave the ship after his discharge to be quit of the job. His position was like that of one who sleeps ashore and goes back and forth to work upon a harbor vessel; it is part of the business that he shall leave the ship at night and come back in the morning. *The Bouker No. 2*, 241 Fed. Rep. 831 (C. C. A. 2)."

This decision was apparently not before the Third Circuit when it decided the *Jones* case. No reference was made to it. The decision allowing maintenance to Jones was placed upon the very narrow ground that Jones was near his ship when the accident happened. The ancient precepts and the broad principles, upon which maintenance and cure is allowed, were not discussed. Indeed, the court refused to express any opinion on a case having facts similar to those in the *Aguilar* case.

Because no new brief will be submitted by petitioner, it will be necessary for the respondent to consider his points as they appear in his application for certiorari.

The Issue.

The sole issue before the court is whether a seaman who was injured when he was one-half a mile away from his ship, while ashore on his own personal business, can impose upon his employer the cost of his maintenance and cure.

POINT I.

IT IS THE ANCIENT AND UNIVERSAL RULE THAT A SEAMAN INJURED ASHORE, WHILE THERE FOR PERSONAL BUSINESS, MAY NOT RECOVER FROM THE SHIPOWNER THE COST OF HIS MAINTENANCE AND CURE.

Early American cases have accepted the ancient codes and have founded the American doctrine of maintenance and cure on them. This court has accepted them. *The Osceola*, 189 U. S. 158. More recently, they have been recognized and applied in *O'Donnell* v. *Great Lakes Dredge and Dock Company*, No. 320, ... U. S. .....; *Barlow* v. *Pan*

Atlantic S. S. Corporation et al. (C. C. A. 2), 101 F. (2d) 697 and *The Berwindglen* (C. C. A. 1), 88 F. (2d) 125.

All of these codes limit the shipowner's obligation to pay maintenance and cure to cases in which the injury or illness was suffered in the service of the ship, meaning while on the ship, or ashore on ship's business.

The Laws of Oleron, Article VI (30 Fed. Cas. p. 1174).

The Laws of Hanse Towns, Article XXXIX (ibid. p. 1200).

The Marine Ordinances of Louis XIV, Title Fourth, Article XI, XII (ibid. p. 1209).

The Laws of Wisbuy, Article XVIII (ibid. p. 1191), which is as follows:

> "A mariner being ashore in the master's or the ship's service, if he should happen to be wounded, he shall be maintained and cured at the charge of the ship: but if he goes ashore on his own head to be merry, and divert himself, or otherwise, and happens to be wounded, the master may turn him off; and the mariner shall be obliged to refund what he has received, and besides to pay what the master shall be forced to pay over and above to another whom he shall hire in his place."

Several versions of the Laws of Oleron appear in Twiss' The Black Book of Admiralty (Chronicles and Memorials of Great Britain and Ireland During the Middle Ages), In Volume 2 page 217, Article VI reads:

> "Mariners hire themselves to their master, and there are some of them who go out [of the ship] without leave of the master, and get drunk, and make quarrels, and some of them are hurt, the master is not liable to make them be healed nor to provide them with anything, but he may well put them out [of the ship] and hire others in their place or in his place,

> and if it costs more, the mariner ought to pay, if the master finds anything of his own, but if the master has sent him on any service of the ship by his order, and he wounds or hurts himself, he ought to be healed at the cost of the ship and be provided for. This is the judgment in such case."

In another version, Volume 1, Page 95, the last phrase reads:

> "* * * but if the master send them in any errand for the profit of the ship, and that they should hurt them, or that any did grieve them, they ought to be healed at the cost of the ship. This is the judgment."

The use of this phrase makes it clear that the ship bore the seaman's maintenance and cure due to be a shore accident only when he was there by the master's orders and on "any service of the ship". According to the second version "service of the ship" means "for the profit of the ship".

The foregoing rules have been invoked to deny seamen recovery for the cost of maintenance and cure where their injury was due to intoxication, *The Berwindglen, supra, Barlow* case, *supra, Lortie* v. *American-Hawaiian Steamship Company* (C. C. A. 9), 78 F. (2d) 819; venereal disease or gross acts of indiscretion, *The Alector*, 263 Fed. 1007, *Chandler* v. *The Annie Buckman*, 5 Fed. Cas. 449 (Case No. 2,591a), *Zambrano* v. *Moore-McCormack Lines Inc.* (C. C. A. 2), 131 F. 2d 537; a personal fight, *Lortie* v. *American Hawaiian Steamship Company, supra; Brock* v. *Standard Oil Company of New Jersey*, 33 F. Supp. 353; horseplay on board ship, *Meyer* v. *Dollar Steamship Line*, 49 F. (2d) 1002; playing baseball ashore, *Collins* v. *Dollar Steamship Lines, Inc. Limited*, 23 F. Supp. 395; willful misconduct, *Oliver* v. *Calmar S. S. Co.*, 33 F. Supp. 356; a motorcycle accident

while returning from shore leave, *Smith* v. *American South African Line, Inc.*, 37 F. Supp. 262; riding in a truck away from the ship on personal business, *Wahlgren* v. *Standard Oil Company of New Jersey*, 1941 A. M. C. 1788; a fall off a dock to which his ship was moored during a blackout, after he returned from shore leave, *Lilly* v. *United States Lines Company*, 42 F. Supp. 214 and finally, in pursuit of a personal matter, *The President Coolidge*, 23 F. Supp. 575.

The codes expressly provide that the burden of a seamen's maintenance for injuries received while on personal business ashore are on him and not the shipowner. The cases follow the codes.

Therefore the question of what constitutes "service of the ship" or "call of duty" is really not relevant in the present inquiry. Admittedly (Record, p. 10) petitioner was ashore for his own pleasure when he was hurt. He is squarely within the rule which puts maintenance expenses on him. To say that he was in the "service of his ship" at the time is to disregard the meaning of the words.

Petitioner here and Jones in the companion case have sought to extend the right to maintenance to situations where maintenance has never been allowed. Actually they seek a change in the law by judicial precept. One of the devices used by them is to assert that the right to maintenance is co-extensive with the term of the contract. No case has ever said so. Adoption of such a rule would settle all the problems. There would then be no need to consider whether the injury was received in the "service of the ship". Any personal act, even drinking in a saloon, would be "for the profit of the ship". This doctrine is unjust. It makes the shipowner liable for injuries regardless of where or how they occur, which he not only cannot provide against but he cannot even anticipate. Moreover, he has

no means of ascertaining the legitimacy of claims arising under such circumstances.

It is next said that an artificial meaning should be given to the expression "service of the ship" so that it will depend only upon what is in the seaman's mind. Thus if he is going from the ship and has in mind coming back, his going away is in the "service of the ship". If he says that at the moment of his accident he had in his mind returning to the ship, he is in the "service of the ship" and the cost of maintenance should be on the shipowner.

No authority is submitted to support either of these contentions. The case of *Reed* v. *Canfield*, 20 Fed. Cas. 426 (Case No. 11,641) is cited by petitioner as authority for his erroneous position.

However petitioner overlooks the fact that the seaman, in that case, was in the performance of service to his ship at the time the injury occurred. Previously, the seaman, pursuant to orders, had rowed the ship's mates from the vessel's anchorage to shore, in the ship's rowboat. The injury occurred when he and fellow seamen were rowing the boat back to their ship. The issue was whether the shipowner had the burden of the seaman's maintenance and cure when the misfortune befell the seaman at a "home port". The contention which the petitioner makes here, viz.: that maintenance is payable when the injury occurs while ashore for personal business, was not even mentioned.

However, the language of Judge Story bears upon the issues in the present case. He said at page 428:

> "• • •. Lord Tenterden, in his excellent treatise on Shipping, lays it down generally, 'that by the ancient marine ordinances, if a mariner falls sick during the voyage, or is hurt in the performance of his duty, he is to be cured at the expense of the ship; *but not, if he receives an injury in the pursuit of his*

own private concerns.' And he is fully borne out in this statement by the language of the ordinances cited by him on this occasion. * * *." (Italics ours.)

It should be noted that the Circuit Court in the *Jones* case, *supra,* page 799, has misinterpreted the facts in the *Reed* case. The seaman was not ashore for pleasure, did not overstay his time but was in fact, when injured, performing a duty imposed upon him by his ship's officers.

The test of whether or not a seaman is in the service of a ship was carefully discussed in the *Meyer* case, *supra,* where the injury was due to "horseplay" on the ship. The court said, page 1003:

> "The phrase 'in the service of the ship,' as applied to ordinary seamen, is closely analogous to the phrase 'in the line of duty,' as applied to soldiers or sailors in the service of the United States. The differences in the status of an ordinary seaman, for example, and that of a sailor are obvious at once, but there is a similarity in the narrow employer-employee relationship in both cases.
>
> "'Line of duty' is defined as follows: 'A person in the active service and submitting to its rules and regulations is, in general, in the line of duty.' Naval Courts and Boards, chapter XII, §1022.
>
> "An injury suffered or a disease contracted by a sailor is considered to have been 'in the line of duty' 'unless it is actually caused by something for which he is responsible which intervenes between his service or performance of duty and the injury or disease. He will be responsible for an intervening cause if (1) it consists of his own wilful misconduct, or (2) it is something which he is doing in pursuance of some private avocation or business, or (3) it is something which grows out of relations unconnected with the service or is not the logical incident of provable effect of duty in the service.' *Ibid.*"

The petitioner does not mention *Angco et al.* v. *Standard Oil Company of California* (C. C. A. 9), 66 F. (2d) 929, which he was unable to successfully distinguish below. The court there describes the status of a seaman on shore leave as follows, page 930:

> "When Warner left the ship at Kahului he was off duty, upon pleasure bound, and was beyond the scope of his employment. Unless some unforeseen emergency arose he would not again come within the scope of his employment until he returned to the vessel. He was under no instructions to perform any service in any way connected with his employment; his sole responsibility, to return to his ship before she sailed, was a personal one. * * *"

In the *Collins* case, *supra*, the seaman was injured ashore. The Court, after stating that the doctrine of charging the shipowner with a seaman's maintenance and cure should be liberally applied, said, at page 397:

> "* * *. It is reasonable and logical to say that if injured in the ship's service the seaman shall be cared for by the ship. To extend the obligation of the ship beyond this so as to require it to provide maintenance and cure for one who was injured on shore while engaged in his personal affairs would be to place an unfair burden upon the ship and would relieve the seaman of the risk that he himself should properly assume. I find no authority which would justify recovery of maintenance and cure by the libelant."

The petitioner seeks to avoid the effect of these adverse decisions in two ways. First, he refers to the scene of the accident, which was a half a mile away from the vessel, as a "means of ingress" to the ship (Petition, p. 3). He says

that when the seaman started home, he passed on to the "means of ingress to his ship" (Brief, p. 13).

He also adopts a phrase from a workmen's compensation case involving a longshoreman, whom he calls a seaman, to imply that it has some application in the case at bar (Brief, page 10). *T. J. Moss Tie Co. et al.* vs. *Tanner et al.*, 44 F. 2d 928. The phrase is "the route of immediate ingress and egress". The petitioner says that an immediate ingress and egress may cover "extensive distance".

However, the blunt fact is that the petitioner was a half a mile away from the ship when he was injured and that fact cannot be changed by referring to it as "a means of access" or as a "route of immediate ingress and egress."

The second device which the petitioner uses to escape the weight of authority against him is to erroneously assert that the ancient case of *Reed* v. *Canfield, supra,* involved an injury to a seaman who had gone ashore for pleasure and has been squarely reversed by the decision of the Circuit Court of Appeals in thi case.

The fact was that in *Reed* v. *Canfield, supra,* the libelant, when injured, was actually engaged in carrying out orders issued to him by the mates. He was in the ship's rowboat on the way back to his vessel. He had gone ashore by order of the mates for express purpose of rowing the mates ashore. The petitioner is in error when he states that libelant had "overstayed his allotted time". The specific finding by the lower court, which was not disturbed on appeal, was that the libelant had not overstayed his leave. *Canfield* v. *Reed*, 5 Fed. Cas. 9 (Case No. 2,384) at page 10. The opinions in both courts not only do not support the petitioner's statements but there is nothing in them which in any way impairs the ancient and modern authority which denies maintenance and cure to a seaman who is injured while on shore on his own personal business.

Petitioner argues that his accident should be considered as having occurred "in the service of the ship" because an accident in similar circumstances to a shore worker would have been within state compensation laws. There, the test is whether the accident "arose out of and in the course of the employment". He says (Brief, page 10), that there are three cases involving seamen where the maritime law of maintenance and cure was held to be based on the same rule as modern compensation laws. Of the three cases cited, two involved injuries which occurred to the seamen while actually aboard vessels, *Hennessey* v. *M. & J. Tracy, Inc.*, 295 Fed. 680 and *Wong Bar* v. *Suburban Petroleum Transport Inc.*, 119 F. 2d 745. The third case, *T. J. Moss Tie Co. et al.* v. *Tanner, et al.*, 44 F. 2d 928 did not involve a seaman, but a longshoreman, who was riding on a sling suspended from a boom of a ship. His injury was held to "arise out of and in the course of his employment" under the applicable compensation act.

There is nothing in these cases which supports the petitioner in his statement that the courts have held that the phrase "in the service of the ship" as applied to seamen has the same meaning as the phrase "arising out of and in the course of his employment" as applied to a shore worker.

Workmen's compensation rights furnish no analogy to maintenance and cure. The two spring from entirely different sources. Workmen's compensation is statutory and gives an injured employee part of his wages and prompt medical attention without regard to whether negligence was a causative factor in the accident. On the one hand, it requires the employer to pay a portion of the wages for temporary disability, scheduled amounts for permanent disability and provide the medical attention and, on the other hand, deprives the employee of the right to sue his employer for indemnity. There was a compromise of the rights

of the parties but with favor to the employee. This was just and intended to put upon the industry the cost of injury to the employees therein. To carry out the beneficial purposes of the law, it was generously interpreted to extend to situations beyond the actual course and place of work. The cases cited by the petitioner in his brief are such cases.

Such cases have nothing in common with maintenance and cure, which has a historical background of entirely different implication. As the Circuit Court observed (Record, pp. 19-20):

> "* * *. A distinction based upon the same activities of the seaman ashore and on board ship is perhaps *a priori* not very reasonable; but it has from ancient times been true that what takes place on the ship may have different legal consequences from the same events on the land. Besides, the risks of even amusement on board ship are more contracted than those on land; and as to a seaman's private business, it can scarcely be said to be part of the ship's service in any sense. * * *".

One of the results of the historical background of maintenance and cure is that a seaman's right to indemnity for negligence is not restricted. This was so even before the Jones Act (46 U. S. C. 688). On the other hand, the social purpose behind modern compensation acts requires such restriction.

The Circuit Court referred to this preferred status of seamen as follows (Record, page 18):

> "The outlines of the seaman's right to maintenance and cure have remained fairly constant from very ancient times; until Congress sees fit to change its incidents, the court should enforce it as it is; it has already been generously supplemented by the Jones Act (688, Title 46, U. S. Code)."

Accordingly, Workmen's Compensation is allowed wherever the accident arises out of and in the course of the employment, but maintenance and cure is limited to cases where the injury or illness arose "in the service of the ship". A seaman who is ashore for his own pleasure is not "in the service of the vessel" nor is he "subject to the call of duty". Even were this the case where the broad rule of Workmen's Compensation was applicable, viz.: "arising out of and in the course of his employment", this injury would not come within such a rule. Here, there was no necessity for the seaman to go ashore. He had his home aboard the vessel.

As the Circuit Court of Appeals pointed out, there is a distinction between those cases where an employee is required to sleep ashore and the cases where he sleeps on and makes his home aboard his vessel. If it could be said that a seaman who is required to sleep ashore is still engaged upon his employment while he is going back and forth, there is no justification for a similar statement concerning an employee who is provided with sleeping accommodations aboard the vessel. His employer has no interest whatever in his going back and forth to shore upon personal errands of pleasure.

It may be argued that the instant case is affected by Article II of the Shipowners' Liability Convention of 1936, 54 Stat., page 1695, effective October 29, 1939. The convention could not control this case because Aguilar's accident happened on April 18, 1938, more than a year before the convention became effective.

Furthermore, the convention is not operative because there has never been any legislation to implement it. This is necessary. *Choy* v. *Pan American Airways Company* (U. S. D. C. S. D. N. Y.) 1941 A. M. C. 483 (not otherwise reported). That case concerned a similar convention, the

Warsaw Convention of 1928. The Court denied that it had any application because of the lack of supporting legislation.

Legislation was passed by the House of Representatives on July 31, 1939, to give effect to the Shipowners' Liability Convention. The bill was known as H. R. 6881, An Act to Implement the Provisions of the Shipowners' Liability (Sick and Injured Seamen) Convention of 1936. However, the bill was never enacted by the Senate.

It is interesting to note, however, that the bill (Sec. 4) exempted the shipowner from liability for maintenance on account of sickness and injury "incurred otherwise than in the service of the ship".

If it be considered that the convention is operative without implementing legislation, still it does not alter the existing maintenance and cure rules applicable to petitioner's case in force in the United States. This is so because the convention was so worded as to save the existing rules in certain specified cases, of which this case is one (Article 2, Subdivision 2).

Thus the law, as established under the codes and the cases cited above, remains unchanged. This Court seems to have been of a similar opinion, *O'Donnell* v. *Great Lakes Dredge and Dock Company, supra.* When a seaman goes ashore for his own pleasure, he is not in the service of the ship. Such a seaman is not "subject to the call of duty". Indeed, he has deliberately placed himself in a position

where he cannot hear the call of duty and has done it for purposes of his own pleasure. If duty called him, he could not be found.

POINT II.

THE DECISION OF THE CIRCUIT COURT SHOULD BE AFFIRMED.

Respectfully submitted,

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p. 4, 10 + 11

SUPREME COURT OF THE UNITED STATES.

Nos. 454, 582.—October Term, 1942.

Pedro Aguilar, Petitioner, vs. Standard Oil Company of New Jersey.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.
Waterman Steamship Corporation, Petitioner, vs. David E. Jones.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 19, 1943.]

Mr. Justice Rutledge delivered the opinion of the Court.

The question presented by these cases is whether a shipowner is liable for wages and maintenance and cure to a seaman who, having left his vessel on authorized shore leave, is injured while traversing the only available route between the moored ship and a public street. The injury in No. 582 occurred while the seaman was departing for his leave. That in No. 454 occurred while he was returning.

The complaint in No. 582 discloses that the plaintiff, respondent here, was a messman on the Steamship Beauregard, owned by defendant. On January 16, 1941, the vessel, which apparently was engaged in the coastwise trade between New Orleans and East Coast and Gulf ports, was moored to Pier C, Port Richmond, Philadelphia. At about 6 p. m. plaintiff left the ship on shore leave. As he was proceeding through the pier toward the street all the lights were extinguished. In the ensuing darkness he fell into an open ditch at a railroad siding. This caused injuries which required treatment and prevented him from resuming his usual duties. This action followed, for maintenance and cure and wages. On defendant's motion the District Court dismissed the complaint. The ground assigned was that at the time of his injury plaintiff was not ashore on the ship's business. The Third Circuit Court of Appeals reversed and remanded (130 F. 2d 797), holding that on the facts stated in the complaint defendant was liable for maintenance and cure and wages.

The stipulation of facts in No. 454 discloses that on April 18, 1938, the defendant's vessel, the Steamship E. M. Clark, was lying docked at the premises of the Mexican Petroleum Company, in Carteret, New Jersey, which defendant neither owned, operated nor controlled. Petitioner, a member of the crew, obtained permission from the master and went ashore on his own personal business. In order to reach the vessel on returning from shore leave, he had to pass through the premises of the Mexican Petroleum Company. After he had gone through the entrance gate and while he was walking on the roadway of those premises about a half mile from the ship, he was struck and injured by a motor vehicle which was neither owned, operated nor controlled by the defendant. Petitioner brought this action to recover $10,000, the expense of his maintenance and cure for the injuries so incurred. The District Court dismissed the complaint and on appeal the Second Circuit Court of Appeals affirmed. 130 F. 2d 154. Both courts acted on the ground that in going ashore on personal business the plaintiff left the service of the ship and therefore no liability for maintenance and cure attached.

The cases were brought here to resolve the conflict thus presented on an important question of maritime law.

All admit the shipowner is liable if the injury occurs while the seaman is "in the service of the ship," and the issue is cast in these ambiguous terms, the parties giving different meanings to the ancient phrase.

The claimants say it includes the whole period of service covered by the seaman's articles; and, if he is injured during this time, the right is made out, unless it is shown by way of defense he has forfeited it by misconduct causing the injury. Since the injuries here took place during the period and there was admittedly no misconduct, it is said the claims are established. Corollaries of this view are that recovery is not conditioned on showing the injury was received while the seaman was at work or doing some errand for the employer and that going ashore with leave or returning from it is part of being "in the service of the ship," whether or not it was to perform such an errand.

The shipowners regard the phrase more narrowly. In their view it requires the seaman to be injured, if ashore, while he is "on duty" or at work, doing some task connected with the vessel's business. Going ashore simply for diversion and relief from its routine and discipline or for any matter personal to the seaman

takes him out of the service of the ship; and the departure is made the moment he steps off deck and onto the dock or pier, perhaps as he descends the gangplank or ladder. Cf. *The President Coolidge*, 23 F. Supp. 575 (D. C.). Likewise return is not made until he is on board again. Cf. *Lilly* v. *United States Lines Co.*, 42 F. Supp. 214 (D. C.). In this view it is of no moment whether the injury results from the seaman's fault or misconduct or from causes entirely beyond his control.

It will aid in determining the scope of the liability to consider its origin and nature.

From the earliest times maritime nations have recognized that unique hazards, emphasized by unusual tenure and control, attend the work of seamen. The physical risks created by natural elements and the limitations of human adaptability to work at sea enlarge the narrower and more strictly occupational hazards of sailing and operating vessels. And the restrictions which accompany living aboard ship for long periods at a time combine with the constant shuttling between unfamiliar ports to deprive the seaman of the comforts and opportunities for leisure, essential for living and working,[1] that accompany most land occupations. Furthermore, the seaman's unusual subjection to authority adds the weight of what would be involuntary servitude for others to these extraordinary hazards and limitations of ship life.

Accordingly, with the combined object of encouraging marine commerce and assuring the well-being of seamen, maritime nations uniformly have imposed broad responsibilities for their health and safety upon the owners of ships.[2] In this country these notions were reflected early, and have since been expanded in legislation designed to secure the comfort and health of sea-

[1] *Cf.* Holmes, J., dissenting in Tyson and Brother v. Banton, 273 U. S. 418, 447.

[2] As Mr. Justice Story, then on circuit, observed in Harden v. Gordon, 2 Mason 541, 11 Fed. Cas. No. 6047 (C. C.), at 483, "Seamen are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils, and exhausting labour. They are generally poor and friendless, and acquire habits of gross indulgence, carelessness, and improvidence. If some provision be not made for them in sickness at the expense of the ship, they must often in foreign ports suffer the accumulated evils of disease, and poverty, and sometimes perish from the want of suitable nourishment. . . . If these expenses are a charge upon the ship, the interest of the owner will be immediately connected with that of the seamen. The master will watch over their health with vigilance and fidelity. He will take the best methods, as well to prevent diseases, as to ensure a speedy recovery from them. He will never be tempted to abandon the sick to their forlorn fate; but his duty, combining with the interest of his owner, will lead him to succor their distress, and shed

men aboard ship,[3] hospitalization at home[4] and care abroad.[5] The statutes are uniform in evincing solicitude that the seaman shall have at hand the barest essentials for existence. They do this in two ways. One is by recognizing the shipowner's duty to supply them, the other by providing for care at public expense. The former do not create the duty. That existed long before the statutes were adopted. They merely recognize the preexisting obligation and put specific legal sanctions, generally criminal, behind it. Compare *Harden* v. *Gordon*, 2 Mason 541, 11 Fed. Cas. No. 6047 (C. C.); *The George*, 1 Sumn. 151, 10 Fed. Cas. No. 5329 (C. C.); *The Forest*, 1 Ware 429, 9 Fed. Cas. No. 4936 (D. C.). The provisions for public assistance were not intended to relieve the shipowner of his duty. On the contrary their purpose was to make sure the seaman would have care, if the employer should fail to give it and in the rarer cases to which his obligation does not extend. The legislation therefore gives no ground for making inferences adverse to the seaman or restrictive of his rights. Cf. *Reed* v. *Canfield*, 1 Sumn. 195, 20 Fed. Cas. No. 11,641 (C. C.). Rather it furnishes the strongest basis for regarding them broadly,

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a cheering kindness over the anxious hours of suffering and despondency. Beyond this, is the great public policy of preserving this important class of citizens for the commercial service and maritime defence of the nation. Every act of legislation which secures their healths, increases their comforts, and administers to their infirmities, binds them more strongly to their country; and the parental law, which relieves them in sickness by fastening their interests to the ship, is as wise in policy, as it is just in obligation. Even the merchant himself derives an ultimate benefit from what may seem at first an onerous charge. It encourages seamen to engage in perilous voyages with more promptitude, and at lower wages. It diminishes the temptation to plunderage upon the approach of sickness; and urges the seamen to encounter hazards in the ship's service, from which they might otherwise be disposed to withdraw."

[3] *E.g.*, Act of July 20, 1790, c. 29, § 8, 1 Stat. 134; Act of June 7, 1872, c. 322, § 41, 17 Stat. 270; 46 U. S. C. §§ 666, 667, requiring that ships carry a minimum supply of medicines and antiscorbutics. Act of July 20, 1790, c. 29, § 9, 1 Stat. 135; Act of June 7, 1872, c. 322, § 36, 17 Stat. 269; Act of Dec. 21, 1898, c. 28, § 12, 30 Stat. 758; R. S. 4565; 46 U. S. C. §§ 661, 662, requiring that ships carry sufficient and adequate stores and water for the crew. See also 17 Stat. 277, 46 U. S. C. § 713. Act of June 7, 1872, c. 322, § 42, 17 Stat. 270, R. S. 4572; Act of June 4, 1884, c. 121, § 11, 23 Stat. 56; Act of Dec. 21, 1898, c. 28, § 15, 30 Stat. 759; 46 U. S. C. §§ 669, 670, providing that certain basic clothes and heating facilities be furnished by the shipowner; 46 U. S. C. §§ 672-672(c), 673, prescribing qualifications and quotas for crews, and watch divisions.

[4] Act of July 16, 1798, c. 77, 1 Stat. 605; Act of March 2, 1799, c. 36, 1 Stat. 729; 2 Stat. 192; R. S. 4808-13; 24 U. S. C. §§ 1, 6, 8, 11, 193.

[5] Act of Feb. 28, 1803, c. 9, § 4, 2 Stat. 204; 2 Stat. 651; R. S. 4577; 46 U. S. C. § 678, requiring consuls in the case of sick and destitute seamen abroad to provide for their subsistence and return passage to the United States.

when an issue concerning their scope arises, and particularly when it relates to the general character of relief the legislation was intended to secure.

Among the most pervasive incidents of the responsibility anciently imposed upon a shipowner for the health and security of sailors was liability for the maintenance and cure of seamen becoming ill or injured during the period of their service.[6] In the United States this obligation has been recognized consistently as an implied provision in contracts of marine employment.[7] Created thus with the contract of employment, the liability, unlike that for indemnity or that later created by the Jones Act,[8] in no sense is predicated on the fault or negligence of the shipowner. Whether by traditional standards he is or is not responsible for the injury or sickness, he is liable for the expense of curing it as an incident of the marine employer-employee relationship.[9] So broad is the shipowner's obligation that negligence or acts short of culpable misconduct on the seaman's part will not relieve him of the responsibility. *Peterson* v. *The Chandos*, 4 Fed. 645 (D. C.); see also *The J. F. Card*, 43 Fed. 92 (D. C.); *The Ben Flint*, 1 Abb. (U. S.) 126, 3 Fed. Cas. No. 1299 (D. C.). Conceptions of contributory negligence, the fellow-servant doc-

[6] See, *e. g.*, Laws of Oleron, Articles VI, VII; Laws of Wisbuy, Articles XVIII, XIX; Laws of the Hanse Towns, Articles XXXIX, XLV; Marine Ordinances of Louis XIV, of Marine Contracts, Title Fourth, Articles XI, XII, compiled in 30 Fed. Cas. 1171-1216; *cf.* Harden *v.* Gordon, *supra*.

The Laws of Oleron are typical of the provision for injuries: "If any of the mariners hired by the master of any vessel, go out of the ship without his leave, and get themselves drunk, and thereby there happens contempt to their master, debates, or fighting and quarrelling among themselves, whereby some happen to be wounded: in this case the master shall not be obliged to get them cured, or in any thing to provide for them, but may turn them and their accomplices out of the ship; . . . but if by the master's orders and commands any of the ship's company be in the service of the ship, and thereby happen to be wounded or otherwise hurt, in that case they shall be cured and provided for at the costs and charges of the said ship." Article VI.

[7] Harden *v.* Gordon, 2 Mason 541, 11 Fed. Cas. No. 6047 (C. C.); The Atlantic, Abb. Adm. 451, 2 Fed. Cas. No. 620 (D. C.); Cortes *v.* Baltimore Insular Line, 287 U. S. 367, 371.

[8] *Cf.* The Osceola, 189 U. S. 158; Pacific Steamship Co. *v.* Peterson, 278 U. S. 130; O'Donnell *v.* Great Lakes Dredging Co., No. 320, October Term 1942, decided February 1, 1943; Brown *v.* The Bradish Johnson, 1 Woods 301, 4 Fed. Cas. No. 1992 (C. C.); The A. Heaton, 43 Fed. 592 (C. C.); The Mars, 149 Fed. 729 (C. C. A.).

[9] The City of Alexandria, 17 Fed. 390 (D. C.); The A. Heaton, 43 Fed. 592 (C. C.); The Wensleydale, 41 Fed. 829 (D. C.); Sorenson *v.* Alaska S. S. Co., 247 Fed. 294 (C. C. A.); Peterson *v.* The Chandos, 4 Fed. 645 (D. C.); *cf.* Seely *v.* City of New York, 24 F. 2d 412 (C. C. A.); *cf.* Reed *v.* Canfield, 1 Sumn. 195, 20 Fed. Cas. No. 11,641 (C. C.).

trine, and assumption of risk have no place in the liability or defense against it. Only some wilful misbehavior or deliberate act of indiscretion suffices to deprive the seaman of his protection. *The Ben Flint, supra.* The traditional instances are venereal disease[10] and injuries received as a result of intoxication,[11] though on occasion the latter has been qualified in recognition of a classic predisposition of sailors ashore.[12] Other recent cases however disclose a tendency to expand these traditional exceptions.[13]

Consistently with the basic premises of the liability, it was early suggested that the risks which it covered were not only those arising in the actual performance of the seaman's duties. *Reed* v. *Canfield,* 1 Sumn. 195, 20 Fed. Cas. No. 11,641 (C. C.); *Ringgold* v. *Crocker,* Abb. Adm. 344, 20 Fed. Cas. No. 11,843 (D. C.). Unlike men employed in service on land, the seaman, when he finishes his day's work, is neither relieved of obligations to his employer nor wholly free to dispose of his leisure as he sees fit. Of necessity, during the voyage he must eat, drink, lodge and divert himself within the confines of the ship. In short, during the period of his tenure the vessel is not merely his place of employment; it is the framework of his existence. For that reason among others his employer's responsibility for maintenance and cure extends beyond injuries sustained because of, or while engaged in, activities required by his employment. In this respect it is a broader liability than that imposed by modern workmen's compensation statutes.[14] Appropriately it covers all injuries and ailments incurred without misconduct on the seaman's part amounting to ground for forfeiture, at least while he is on the ship, "subject to the call of duty as a seaman, and earning wages as such." *The Bouker No. 2,* 241 Fed. 831, 833 (C. C. A.), certiorari denied, 245 U. S. 647; *Calmar S. S. Co.* v. *Taylor,* 303 U. S.

[10] Pierce v. Patton, Gilp. 435, 19 Fed. Cas. No. 11,145 (D. C.); The Alector, 263 Fed. 1007 (D. C.); Chandler v. The Annie Buckman, 21 Betts 112, 5 Fed. Cas. No. 2591 a (D. C.); Zambrano v. Moore-McCormick Lines, Inc., 131 F. 2d 537 (C. C. A.); Wytheville, 1936 A. M. C. 1281 (D. C.).

[11] Barlow v. Pan-Atlantic Steamship Corp., 101 F. 2d 697 (C. C. A.); The Berwindglen, 88 F. 2d 125 (C. C. A.); Lortie v. American-Hawaiian Steamship Co., 78 F. 2d 819 (C. C. A.); Oliver v. Calmar S. S. Co., 33 F. Supp. 356 (D. C.).

[12] The Quaker City, 1 F. Supp. 840 (D. C.).

[13] *Cf.* text and note 15 *infra.*

[14] *Compare* Yukes v. Globe Steamship Corp., 107 F. 2d 888 (C. C. A.); but *cf.* States Steamship Co. v. Berglann, 41 F. 2d 456 (C. C. A.), certiorari denied, 282 U. S. 868; Holm v. Cities Service Transportation Co., 60 F. 2d 721 (C. C. A.).

525, 527-8; *Holm* v. *Cities Service Transportation Co.*, 60 F. 2d 721 (C. C. A.); *Highland* v. *The Harriet C. Kerlin*, 41 Fed. 222 (C. C.); *The Quaker City*, 1 F. Supp. 840 (D. C.); compare *Neilson* v. *The Laura*, 2 Sawy. 242, 17 Fed. Cas. No. 10,092 (D. C.); *Callon* v. *Williams*, 2 Lowell 1, 4 Fed. Cas. No. 2324 (D. C.).[15]

When the seaman's duties carry him ashore, the shipowner's obligation is neither terminated nor narrowed.[16] When he leaves the ship contrary to orders, however, the owner's duty is ended.[17] Between these extremes are the instant cases, raising for the first time here the question of the existence and scope of the shipowner's duty when the seaman is injured while on shore leave but without specific chore for the ship. Liability in that circumstance was obscured in the first maritime codes[18] and although early suggested has been recognized only implicitly in lower federal courts.[19] Very recently it has been explicitly denied in several district courts.[20]

We think that the principles governing shipboard injuries apply to the facts presented by these cases. To relieve the shipowner of his obligation in the case of injuries incurred on shore leave would cast upon the seaman hazards encountered only by reason of the voyage. The assumption is hardly sound that the normal uses and purposes of shore leave are "exclusively personal" and

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[15] The recent tendency to confine the scope of the obligation to those shipboard injuries which are caused by the requirements of the seaman's duties [Meyer v. Dollar S. S. Line Co., 49 F. 2d 1002 (C. C. A.); *cf.* Brock v. Standard Oil Co. of N. J., 33 F. Supp. 353 (D. C.);] is consonant neither with the liberality which courts of admiralty traditionally have displayed toward seamen who are their wards nor with the dictates of sound maritime policy. Calmar S. S. Co. v. Taylor, *supra*, at 529.

[16] See *e. g.* Laws of Oleron Art. VI, VII; Laws of Wisbuy Art. XVIII, XIX; Laws of Hanse Towns Art. XXXIX, XLV; see also The Montezuma, 19 F. 2d 355 (C. C. A.); Gomez v. Periera, 42 F. Supp. 328 (D. C.).

[17] Sound reasons of discipline long have impelled this rule. *Cf.*, *e. g.*, Laws of Oleron, Art. VII; Marine Ordinances of Louis XIV, *supra;* Laws of Wisbuy, *supra;* and compare Pierce v. Patton, *supra* note 10.

[18] Thus while the Laws of Oleron and the Marine Ordinances of Louis XIV, *supra*, relieve from liability for injuries incurred while on shore without leave, they say nothing on the question here involved. Similarly, the Laws of Wisbuy, *supra*, are ambiguous on this point. The Laws of the Hanse Towns suggest that any injuries received otherwise than in the ship's service are not within the right to maintenance and cure.

[19] *E. g.*, Reed v. Canfield, *supra* note 9; The Berwindglen, *supra* note 11; *cf.* The J. M. Danziger, 1938 A. M. C. 685 (D. C.).

[20] Smith v. American South African Line, Inc., 37 F. Supp. 262 (D. C.); Wahlgren v. Standard Oil Co. of N. J., 42 F. Supp. 992 (D. C.); Collins v. Dollar Steamship Lines, Inc. Ltd., 23 F. Supp. 395 (D. C.).

have no relation to the vessel's business. Men cannot live for long cooped up aboard ship without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ship is necessary if the work is to go on, more so that it may move smoothly. No master would take a crew to sea if he could not grant shore leave, and no crew would be taken if it could never obtain it. Even more for the seaman than for the landsman, therefore, "the superfluous is the necessary . . . to make life livable"[21] and to get work done. In short, shore leave is an elemental necessity in the sailing of ships, a part of the business as old as the art, not merely a personal diversion.

The voyage creates not only the need for relaxation ashore, but the necessity that it be satisfied in distant and unfamiliar ports. If in those surroundings the seaman, without disqualifying misconduct, contracts disease or incurs injury, it is because of the voyage, the shipowner's business. That business has separated him from his usual places of association. By adding this separation to the restrictions of living as well as working aboard, it forges dual and unique compulsions for seeking relief wherever it may be found. In sum, it is the ship's business which subjects the seaman to the risks attending hours of relaxation in strange surroundings. Accordingly it is but reasonable that the business extend the same protections against injury from them as it gives for other risks of the employment.

It was from considerations of exactly this character that the liability for maintenance and cure arose. From them likewise, its legal incidents were derived. The shipowner owes the protection regardless of whether he is at fault; the seaman's fault, unless gross, cannot defeat it; unlike the statutory liability of employers on land it is not limited to strictly occupational hazards or to injuries which have an immediate causal connection with an act of labor. An obligation which thus originated and was shaped in response to the needs of seamen for protection from the hazards and peculiarities of marine employment should not be narrowed to exclude from its scope characteristic and essential elements of that work. And, indeed, no decision has been found which so narrows the shipowner's parallel obligation in the case of sickness or disease. Rather the implications of exist-

[21] Holmes, J., dissenting in Tyson and Brother v. Banton, 273 U. S. 418, 447.

ing authority point the other way. Cf. *The Bouker No. 2, supra.*[22] The considerations, including those of public interest adverted to by Mr. Justice Story, which support the liability for illness,[23] or for injuries received aboard ship, likewise sustain it for injuries incurred on shore leave, as were those now in issue. To exclude such injuries from the scope of the liability would ignore its origins and purposes.

There is strong ground therefore for regarding the right to maintenance and cure as covering injuries received without misconduct while on shore leave. Certainly the nature and foundations of the liability require that it be not narrowly confined or whittled down by restrictive and artificial distinctions defeating its broad and beneficial purposes. If leeway is to be given in either direction, all the considerations which brought the liability into being dictate it should be in the sailor's behalf. In this view, the nature and purposes of the liability do not permit distinctions which allow recovery when the seaman becomes ill or is injured while idle aboard, cf. *Calmar Steamship Co.* v. *Taylor,* 303 U. S. 525; *The Bouker No. 2,* 241 Fed. 831 (C. C. A.); *Holm* v. *Cities Service Transportation Co.,* 60 F. 2d 721 (C. C. A.); *The Quaker City,* 1 F. Supp. 840 (D. C.), or when doing some minor errand for the ship ashore, *Gomes* v. *Pereira,* 42 F. Supp. 328 (D. C.), but deny it when he falls from the ladder or gangplank as he leaves the vessel on shore leave, cf. *The President Coolidge,* 23 F. Supp. 575 (D. C.), or is returning from it, *Lilly* v. *United States Lines Co.,* 42 F. Supp. 214 (D. C.). Such refinements cut the heart from a protection to which they are wholly foreign in aim and effect. The sailor departing for or returning from shore leave is, sensibly, no more beyond the broad protection of his right to maintenance and cure than is the seaman quitting the ship on

[22] See also Holmes v. Hutchinson, Gilp. 447, 12 Fed. Cas. No. 6639 (D. C.); The Forest, 1 Ware 429, 9 Fed. Cas. No. 4936 (D. C.); The Nimrod, 1 Ware 1, 18 Fed. Cas. No. 10,267 (D. C.); and see cases cited *supra* note 10.

[23] At the argument it was suggested that a reason which might sustain the imposition of liability for sickness innocently contracted on shore leave, but not for injuries so incurred, would be the difficulty of proving origin ashore. The difficulty undoubtedly would exist in some cases, but hardly in all. No authority has been found which suggests this explanation. Rather, cases of illness, which are within the reason and policy of the liability, are indistinguishable from cases of injury received without misconduct. The risk of incidence is not less in the one case than in the other. The afflicted seaman is made as helpless and dependent by injury as by illness. His resources for meeting the catastrophe and his employer's burden are not greater because he is hurt rather than ill.

being discharged or boarding it on first reporting for duty. Cf. *The Michael Tracy*, 295 Fed. 680 (C. C. A.); *The Scotland*, 42 Fed. 925 (D. C.).

Plaintiffs here were injured while traversing an area between their moored ships and the public streets by an appropriate route. It is true that in No. 454 the area consisted of the extensive premises of the Mexican Petroleum Company, at whose dock the ship was moored. And it is said the shipowner should not be liable because he had no control over the premises. But it was the shipowner's business which required the use of those facilities. And his obligation to care for the seaman's injuries is, as has been shown, in no sense a function of his negligence or fault. While his ability to control conditions aboard ship may be to some extent an element in creating his responsibility, it is only one of many, is not definitive, and by no means determines the occasions on which his obligation arises. Consequently the fact that the shipowner might not be liable to the seaman in damages for the dock owner's negligence, cf. *Todhul* v. *Sudden & Christenson*, 5 F. 2d 462 (C. C. A.), does not relieve him of his duty of maintenance and cure. We can see no significant difference, therefore, between imposing the liability for injuries received in boarding or quitting the ship and enforcing it for injuries incurred on the dock or other premises which must be traversed in going from the vessel to the public streets or returning to it from them. That much at least is within the liability. How far it extends beyond that point we need not now determine. And, in view of the ground on which we rest the decision, it is not necessary to consider the effects of the Shipowners' Liability Convention of 1936,[24] other than to state that it in no way alters the conclusion here reached.

[24] By presidential proclamation the Convention became effective for the United States and its citizens on October 29, 1939 (54 Stat. 1693). Article 2 provides:

1. The shipowner shall be liable in respect of—
   (a) sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement;
   (b) death resulting from such sickness or injury.

2. Provided that national laws or regulations may make exceptions in respect of:
   (a) injury incurred otherwise than in the service of the ship;
   (b) injury or sickness due to the wilful act, default or misbehavior of the sick, injured or deceased person;
   (c) sickness or infirmity intentionally concealed when the engagement is entered into.

3. National laws or regulations may provide that the shipowner shall not be liable in respect of sickness, or death directly attributable to sickness, if

The judgment in No. 582 is affirmed; that in No. 454 is reversed and remanded to the District Court for further proceedings not inconsistent with this opinion.

Mr. Justice ROBERTS did not participate in the consideration or decision of this case.

The CHIEF JUSTICE thinks that the judgment in No. 454, *Aguilar* v. *Standard Oil Company of New Jersey*, should be affirmed for the reasons stated in the opinion of the Circuit Court of Appeals below, 130 F. 2d 154. In No. 582, *Waterman Steamship Corporation* v. *Jones*, he concurs in the result on the ground that the recovery was authorized by the Shipowners' Liability Convention, 54 Stat. 1695, which became effective before the date of respondent's injury. He is of opinion that Article 2, Clause 1 of the treaty authorizing the recovery is self-executing, and that the exceptions permitted by Clause 2 are not operative in the absence of Congressional legislation giving them effect. (See letter of Secretary of State to the President, dated June 12, 1939, quoted in H. R. Rep. No. 1328, 76th Cong., 1st Sess., pp. 5-7.)

A true copy.

Test:

Clerk, Supreme Court, U. S.

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at the time of the engagement the person employed refused to be medically examined.

Relevant material on the scope and effect of the Convention may be found in H. R. Rep. No. 1328, 76th Cong., 1st Sess., containing the interpretation by the Secretary of State; Record of Proceedings, Inernational Labor Conference, 21st and 22d Sessions, Geneva, 1936, 249-51; International Labor Conference, Geneva, 1929, The Protection of Seamen in Case of Sickness, 1st Discussion, 28-46; International Labor Conference, Geneva, 1931, The Protection of Seamen in Case of Sickness, 2d Discussion, 29-43, 161-2. See also H. R. 6881, 76th Cong., 1st Sess.; 84 Cong. Rec. 10540; Hearings before Committee on Merchant Marine and Fisheries, House of Representatives, on H. R. 6881, 76th Cong., 1st Sess., *passim*; Hearings before Senate Committee on Commerce on H. R. 6881, 76th Cong., 3d Sess., *passim*.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 582

WATERMAN STEAMSHIP CORPORATION,
PETITIONER,

vs.

DAVID E. JONES

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 10, 1942.

CERTIORARI GRANTED JANUARY 4, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

WATERMAN STEAMSHIP CORPORATION, PETITIONER,

vs.

DAVID E. JONES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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[fol. 1]

IN UNITED STATES DISTRICT COURT, EASTERN PENNSYLVANIA

DOCKET 1481, CIVIL ACTION

DAVID E. JONES

vs.

WATERMAN STEAMSHIP CORPORATION

Basis of Action—Federal Question

Jury Trial Claimed by Plaintiff on April 17, 1942

Seamen's Act

Attorneys:

Freedman & Goldstein for Plaintiff.
Rawle & Henderson for Defendant.

DOCKET ENTRIES

April 17, 1941.		Complaint filed.
17,	"	Summons executed.
17,	"	Plaintiff's demand for Jury Trial filed.
30,	"	Summons returned "on Apr. 25, 1941, served" and filed.
May 14,	"	Motion to dismiss filed.
June 16,	"	Argued sur motion to dismiss.
Dec. 5,	"	Opinion, Kirkpatrick, J. granting motion to dismiss filed.
Dec. 5,	"	Judgment of Dismissal filed 12/6/41 noted and notice filed.
Feb. 24, 1942.		Plaintiff's notice of Appeal filed 2/25/42. Copy to R. & H.
Feb. 24,	"	Copy of Clerk's Notice to U. S. Circuit Court of Appeal filed.
April 1,	"	Order of Court extending time for filing record on appeal for 20 days filed 4/2/42 noted and notice mailed.

[fol. 2] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

COMPLAINT—Filed April 17, 1941

Complainant, David E. Jones, claims of the above named respondent the sum of Five Thousand Dollars ($5000.00) with lawful interest thereon, upon a cause of action whereof the following is a true statement:

(1) Complainant is a seaman in the United States Merchant Marine.

(2) Respondent, Waterman Steamship Corporation, is a corporation duly organized and existing under and by virtue of the laws of the State of Alabama.

[fol. 3] (3) Complainant, upon information and belief, avers that at all the times hereinafter mentioned, respondent owned, operated and controlled the S. S. "Beauregard", engaged in coastwise, intercoastal and foreign commerce.

(4) On or about the 16th day of January, 1941, and at all times mentioned herein, complainant was in the employ of respondent as a member of the crew of the S. S. "Beauregard", in the capacity of a messman, at the rate of Seventy Dollars ($70.00) per month and found on coastwise articles from New Orleans, La., to East Coast and Gulf Ports of the United States, for a period of twelve (12) months.

(5) On or about the 16th day of January, 1941, at or about 5:50 P. M. o'clock and while the vessel was moored to Pier C, Port Richmond, Philadelphia, complainant, in the course of his employment left the vessel on shore leave and was proceeding through the pier towards the street when all the lights on the pier were extinguished and in the ensuing darkness fell into the open ditch at the railroad siding and sustained the injuries which are more specifically hereinafter set forth.

(6) During the entire period complainant was employed, he well and truly performed all his duties and was obedient to all lawful commands of the master and other officers of the said vessel.

[fol. 4] (7) As a result of the fall which complainant sustained as aforesaid, he was then and there violently

wounded and injured; he suffered a severe shock to his nervous system; his head was severely injured and he suffered a cerebral concussion and other internal injuries in the head; his back and spine were severely wrenched and injured; he suffered severe and serious injuries to his chest and particularly on the left side, his abdomen and particularly on the left side; his left arm and right knee were severely injured, wrenched, sprained and otherwise injured; his heart was affected; he suffered injuries to his wrist; his ribs were fractured; the left elbow joint was severely wrenched and injured; his left wrist was severely wrenched, sprained and injured; his left hand was injured and impaired; a fine, metallic, body penetrated the lower end of the left radius on the anterial surface; he suffered bruises and abrasions and injuries over both legs; and upon information complainant believes, and therefore avers that he is suffering from a brain injury; the left radial and ulnar nerve was seriously injured together with bony and soft tissue structure; he has suffered excruciating and agonizing aches, pains, mental anguish, shock and disability; he has been unable to assume his usual duties and occupation for a long period of time in the past, and upon information believes and therefore avers, that his injuries have become aggravated and that he will be disabled from performing his usual duties and occupation for a long [fol. 5] period of time in the future; he has in the past and will in the future be compelled to expend large sums of money for medical care and treatment.

(8) Complainant by virtue of his service upon the said vessel claims wages to the end of the articles and maintenance and cure for the period of his disability in an amount, which to your Honorable Court shall seem just and proper upon the trial of this cause.

Wherefore, David E. Jones, claims the sum of Five Thousand Dollars ($5000.00) and brings this action to recover same from the respondent.

Freedman & Goldstein, by (Sgd.) Abraham E. Freedman, Attorneys for Complainant.

[fol. 6] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

MOTION TO DISMISS—Filed May 14, 1941

The defendant moves the court to dismiss the complaint with prejudice for the following reasons:

(1) The plaintiff at the time of his alleged injury was not in the service of the vessel.

(2) The facts alleged show no negligence or other legal obligation upon the part of the defendant to pay damages or cure and maintenance to the plaintiff.

(3) The complaint does not state a claim upon which relief can be granted,

Rawle & Henderson, by (Sgd.) Thomas F. Mount, Attorney for Defendant, 1910 Packard Building, Philadelphia, Pennsylvania.

[fol. 7] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

OPINION SUR MOTION TO DISMISS COMPLAINT—Filed December 5, 1941

Before Kirkpatrick, J.

This is an action for maintenance and cure and wages, by a member of the crew of the S. S. "Beauregard", who is alleged to have sustained personal injuries. The circumstances of the accident are stated in the complaint as follows: "On or about the 16th day of January, 1941, at or about 5:50 P. M. o'clock and while the vessel was moored to Pier C, Port Richmond, Philadelphia, plaintiff, in the course of his employment left the vessel on shore leave and was proceeding through the pier towards the street when all the lights on the pier were extinguished and in the ensuing darkness fell into the open ditch at the rail-

road siding and sustained the injuries which are more specifically hereinafter set forth."

[fol. 8] The law allows cure and maintenance only for disability incurred in the service of the ship. Is an injury sustained by a seaman on shore leave and away from the vessel, but not brought about by any act of his definitely outside the line of duty, within this rule?

The plaintiff concedes that the rule of the President Coolidge, 23 F. Supp. 575, would prevent his recovery in this case, but argues that that decision must have been based upon a misunderstanding of the opinion in the case of Meyer v. Collar S. S. Lines, 40 F. (2d) 1002.

In the Myers case a seaman off watch and resting on the deck with several of his shipmates received a leg injury on the course of a good natured scuffle with one of them. The Court denied recovery for wages to the end of the voyage on the ground that the injury did not occur in the "service of the ship." The Court placed the decision upon the ground that the disability was caused by an independent cause intervening between the seaman's performance of duty and the injury. The plain implication from the opinion is that the mere fact that the seaman was off duty at the time does not necessarily take him out of the service of the ship.

The plaintiff argues that so long as the voyage is uncompleted and the seaman not paid off he is in the service of the ship, *not* matter where he may be; and that the sole test of his right to recover is whether or not his injury [fol. 9] resulted from conduct on his part entirely unconnected with his duties and constituting an intervening cause between his employment and the injury. I do not think that the argument will bear analysis.

There is a plain distinction between the situation of the seaman in the Myer case, off watch on the deck of the ship, and what occurred in the President Coolidge case. In the latter case, the seaman had left for purposes of his own entirely unconnected with h*im* employment (to answer a telephone call from his wife) and was injured in climbing a l*att*er (part of the pier) to get back upon the ship. Whether I should care to go quite as far as did the Court in the President Coolidge is not necessary to decide, for in the present case, the seaman was starting off on shore leave for a period not stated in the Complaint.

The distinction between a sailor off duty but on the ship, as in the Meyer case, and one who has left the ship on shore leave, as here, is not merely one of his physical whereabouts. True, in both cases, he is theoretically subject to the call of duty in case of emergency or perhaps for other reasons. But, only upon the ship, is this theoretical subjection to call of duty a practical matter. He can be reached to do what is necessary. On shore leave he may go wherever he pleases, and if he goes where he cannot be reached he is to all practical intents and purposes exempt from any call to serve the ship until he returns; and what-[fol. 10] ever his general obligation, he is actually beyond the power and authority of the ship's officers.

Of course this is not to be taken as holding that the mere fact that the sailor is physically on shore always put him outside the service of the ship. There may be circumstances where, even on shore leave, he is still within the reach of the call of duty, and in such cases it might well be that he is in the service of the ship. However, the complaint in this case shows nothing but "shore leave", and, as stated, implies nothing more than an obligation to return to the ship at some specified time.

For the reasons stated, I hold that the plaintiff in this case was not in the service of the ship when injured, and the complaint may be dismissed.

To the same general effect are Collins v. Dollar S. S. Line, 23 F. Supp. 395, and Smith vs. American South African Line, 37 F. Supp. 262. The old case of Reed v. Canfield, 20 Fed. Cas. 11, 641, relied on by the libellant, clearly does not reach the facts of the present case. In that case the seaman's injury was incurred while a member of a boat's crew which was attempting to row two of the ship's officers back to the ship after the entire party had spent several hours on shore. The fact that the boat's company had gone on shore wrongfully and had overstayed the time limited them did not make what he was actually doing at the time of the injury outside the service of the ship.

[fol. 11] Ringgold v. Crocker, 20 Fed. Cas. 11, 843, merely holds that the phrase "service of the ship" is not confined in meaning to acts done for the benefit of the ship or in the actual performance of the seaman's duty. The injury in

that case was incurred while the seaman was being flogged by the mate as a punishment for alleged misconduct and contumacy.

Motion is granted and Clerk is direct to enter judgment accordingly.

[fol. 12] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 1481. Civil Action

DAVID E. JONES

vs.

WATERMAN STEAMSHIP CORPORATION

JUDGMENT—Filed December 5, 1941

Before Kirkpatrick, J.

And Now, to wit, December 5, 1941, in accordance with the opinion of the Court granting defendant's motion to dismiss, it is Ordered That the above action be and the same is hereby dismissed with costs to the defendant.

By the Court. Attest: Gilbert W. Ludwig, Deputy Clerk.

[fol. 13] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 8011

DAVID E. JONES

vs.

WATERMAN STEAMSHIP CORPORATION

PETITION FOR LEAVE TO PROSECUTE APPEAL WITHOUT PREPAYMENT OF COSTS, CLERK'S FEES AND FOR LEAVE TO TYPEWRITE THE RECORD AND BRIEFS ON APPEAL—Filed April 20, 1942

To the Honorable, the Judges of the Said Court:

The Petition of David E. Jones, an American Merchant Seaman, respectfully represents:

1. That on the 12th day of April, 1941, your Petitioner commenced an action at law for recovery of maintenance

and cure and wages by reason of certain personal injuries sustained by him while in the employ of the respondent company. Said company being engaged in interstate and foreign commerce by sea.

2. That your Petitioner brought the said action without prepayment of costs, under the provisions of the Act of July 1, 1918 C. 113, section 1, 40 Stat. 683; 28 U. S. C. A. 837.

3. That on the 14th day of May, 1941, a motion to dismiss the said action was filed by the respondent.

4. That on the 16th day of June, 1941, the said motion was heard on argument before the Honorable William H. Kirkpatrick.

[fol. 14] 5. That on the 5th day of December, 1941, an Opinion was filed by the Honorable William H. Kirkpatrick, granting the motion to dismiss the action. On the same day, judgment of dismissal was filed.

6. That on the 24th day of February, 1942, the plaintiff's Notice of Appeal was filed.

7. Your Petitioner is a seaman in the American Merchant Marine and now seeks leave to prosecute this appeal without prepayment of the clerk's fees and without being required to post security, claiming the benefit of the Act of July 1, 1918, C. 113, section 1, 40 Stat. 683, and further, that he be given leave to typewrite the Record and Briefs in this Court.

And your Petitioner will ever pray etc.

Freedman & Goldstein, by Abraham E. Freedman,
Attorneys for Plaintiff.

[fol. 15] State of Pennsylvania,
County of Philadelphia, ss:

Abraham E. Freedman, being duly sworn according to law, deposes and says that he is the attorney for the plaintiff above named; that the facts and allegations contained in the foregoing Petition are true and correct to the best of his knowledge, information and belief; that the plaintiff is unable to take his affidavit by virtue of the fact that

he is out of the jurisdiction and engaged in foreign commerce and has authorized the deponent to act in his stead; and that this Appeal is not taken for the purpose of delay, but because Petitioner believes that injustice has been done.

Abraham E. Freedman, (Sgd.)

Sworn to and subscribed before me this 31st day of March, 1942. Milton M. Borowsky, Notary Public. My commission expires Mar. 24, 1945.

[File endorsement omitted.]

[fol. 16] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

ORDER GRANTING LEAVE TO PROSECUTE APPEAL WITHOUT PREPAYMENT OF COSTS—April 20, 1942

Coram: Biggs, Jones and Goodrich, JJ.

And now, to-wit, this 20th day of April, 1942, upon consideration of the foregoing Petition, it is ordered that leave to prosecute the appeal in the above entitled case be and hereby is allowed without prepayment of costs, clerk's fees and with leave to typewrite the Record and Briefs in this Court.

By the Court: John Biggs, Jr., J.

[File endorsement omitted.]

[fol. 17] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

ORDER ASSIGNING JUDGE FOR ARGUMENT—July 15, 1942

Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

And now, to-wit: this 15th day of July, A. D. 1942, it is ordered that Hon. Paul Leahy District Judge, for the —

District of Delaware, and Hon. —— ——, District Judge, for the — District of —, be, and he is hereby assigned to sit in above case in order to make a full court.

Jones, Circuit Judge.

[File endorsement omitted.]

[fol. 18] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

MINUTE ENTRY OF ARGUMENT—July 15, 1942

And afterwards, to-wit the 15th day of July, 1942, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Charles Alvin Jones and Honorable Herbert F. Goodrich, Circuit Judges, and Honorable Paul Leahy, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to-wit, on the 21st day of September, 1942 come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 19] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

OPINION—Filed September 21, 1942.

Before Jones, Goodrich, Circuit Judges and Leahy, District Judge

GOODRICH, Circuit Judge:

This case is before the court upon an appeal from a dismissal of the plaintiff's complaint by the court below on the ground that the plaintiff's allegations did not state a claim upon which relief could be granted. The action is one brought by a seaman to recover the cost of maintenance,

cure and wages. According to his allegations the plaintiff signed on under coastwise articles from New Orleans, La., to East Coast and Gulf Ports of the United States for a period of twelve months. While the vessel was moored to [fol. 20] Pier C, Port Richmond, Philadelphia, January 16, 1941, plaintiff left on shore leave. As he was proceeding through the pier toward the street all the lights on the pier went out. In the ensuing darkness the plaintiff alleges that he fell into an open ditch at a railroad siding and sustained injury.

The obligation of the defendant to the plaintiff arising out of the maritime law for maintenance and cure is stated in the leading case of The Osceola, 189 U. S. 158, 175 (1903) as follows: "That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued."

The only point with which we are here concerned is the requirement, in order that the obligation for maintenance and cure apply, that the injury or illness arise in the service of the ship. The amount of the claim is not before us nor is there any question of a claim otherwise recoverable being lost by the "wilful misconduct" of the seaman. Decisions involving the latter point are useful only in so far as they assist in defining the right.[1]

The plaintiff's point is that he was continuously in the service of the ship and subject to orders even while on shore leave since he was at all times subject to the call of duty. Defendant says that the plaintiff's liability to orders was theoretical while on shore leave and this was the view taken by the District Judge who said that whatever the general obligation of the seaman might be "he is actually beyond the power and authority of the ship's officers" while on leave.

The nature of the obligation for maintenance and cure has been elaborated at length by judges learned in mari-

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[1] The S. S. Berwindglen, 88 F. (2d) 125 (C. C. A. 1, 1937); Barlow v. Pan Atlantic S. S. Corporation, 101 F. (2d) 697 (C. C. A. 2, 1939); Oliver v. Calmar S. S. Co., 33 F. Supp. 356 (E. D. Pa. 1940).

time law.[2] This learning will not be repeated here. It is sufficient to say that the right arises out of the relationship [fol. 21] by virtue of the peculiar nature of maritime employment. It has been stated in broad language as applicable whenever the injured person was, "when incapacitated, subject to the call of duty as a seaman, and earning wages as such."[3]

As an authority against the right of the plaintiff to recover in this case the defendant relies strongly upon a decision of the Circuit Court of Appeals for the Ninth Circuit. Meyer v. Dollar S. S. Line, 49 (F. (2d) 1002 (C. C. A. 9, 1931). In that case a seaman received an injury while scuffling on the after-port deck with his shipmates. The injured man was off watch at the time. Recovery of wages to the end of the voyage was denied. The court stated that the injured man was at the time in the service of the ship since he was subject to the call of duty even though off watch, but considered that when he commenced scuffling for his own amusement the situation was changed. The court found an analogy by reference to "line of duty" from "Naval Courts and Boards"[4] and the opinion of the Attorney General construing the phrase "in line of duty" as used in the War Risk Insurance Act. The portion of the opinion of the Attorney General quoted discusses "line of duty" for a soldier. If a reference to land employment is relevant one might also look to the judicial construction of

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[2] See the discussion in the Osceola case, supra; Harden v. Gordon, 11 Fed. Cas. No. 6,047 (C. C. D. Me. 1823); Reed v. Canfield, 20 Fed. Cas. No. 11,641 (C. C. D. Mass. 1832); The Bouker No. 2, 241 Fed. 831 (C. C. A. 2, 1917), cert. denied 245 U. S. 647 (1917).

[3] The Bouker No. 2, supra at p. 833, cited with apparent approval in Calmar S. S. Corp. v. Taylor, 303 U. S. 525, 529 (1938).

[4] Note, however, that the definition quoted is "A person in the active service and submitting to its rules and regulations is, in general, in the line of duty." One may ask whether a seaman on shore leave, away from his ship, but with definite limitations on his time of absence, is not submitting to rules and regulations. Cf. the language of the Court in Southern Steamship Co. v. National Labor Relations Board, — U. S. — (1942).

phrases like "arising out of and in the course of employment" and other problems in the application of Employers' Liability and Workmen's Compensation Acts. Be that as it may, we are not here called upon either to agree or disagree with the approach of the court to the problem in the Meyer case nor the several District Court cases which have relied upon and extended it. In spite of provisions that the rule regarding maintenance and cure is a beneficent one to [fol. 22] be applied liberally for the benefit of the seaman, we see in them a distinct tendency to limit the scope of its operation to a much narrower situation than that involved in the concept of employment in the cases of workmen injured in non-maritime occupations.[5] We may treat the Meyer case as an application of the accepted doctrine that the seaman cannot recover for wilful acts on his own part. And we do not need to decide here and, therefore, leave open for decision when the case arises, what might be the legal liability if this plaintiff, having left the pier safely, had been hit by a truck on the public streets of Philadelphia,[6] nor his rights if he sprained his ankle playing baseball on shore.[7] This case involves only the question of the seaman's rights with regard to injury suffered in the area immediately adjacent to his place of work through which he, of necessity, had to pass in going or coming. This liability for maintenance and cure has been, we think, directly adjudicated in former decisions. With respect to this there is no reason, as Justice Story said six score years ago, "to desert the steady light of maritime jurisprudence for the more doubtful guide of general reasoning." Harden v. Gordon, supra. Liability for maintenance and cure for injuries sustained through exposure in returning to the ship was imposed by Justice Story in Reed v. Canfield, supra, where the shore expedition was purely social on the part of those participating in it and where, as

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[5] See The President Coolidge, 23 F. Supp. 575 (N. D. Wash., 1938) where recovery was denied when the seaman was injured while responding to a telephone call from his wife.

[6] Cf. Smith v. American South African Line, Inc., 37 F. Supp. 262 (S. D. N. Y., 1941).

[7] Cf. Collins v. Dollar S. S. Lines, Inc., Ltd., 23 F. Supp. 395 (S. D. N. Y., 1938).

a matter of fact, the crew overstayed its leave. While it is true that officers of the ship were along, the seaman was a member of the party because he volunteered for the occasion. A seaman coming on board to join the ship's crew was allowed recovery for injuries sustained when he fell off a ladder.[8] And a man injured while walking over property at which his vessel was berthed to go aboard and take up [fol. 23] his watch was likewise held to be in the service of the ship.[9] These cases are all instances of a seaman injured while going to work. But the same rule has been applied in the Fourth Circuit, The Michael Tracy,[10] where the seaman, having been paid and discharged at the end of the voyage fell off a ladder when leaving the ship. "The service of the ship is by no means limited to acts done for the benefit of the ship, or in the actual performance of the seaman's duty on board." said the court in Ringgold v. Crocker, 20 Fed. Cas. No. 11,843 (S. D. N. Y., 1848). Just how much further it goes we need not, in this instance, commit ourselves. It certainly goes far enough to include injuries sustained in the immediate neighborhood while going upon or leaving the ship on which the man is employed.

The judgment of the District Court is reversed and the case remanded for further proceedings not inconsistent with this opinion.

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[8] The Scotland, 42 Fed. 925 (S. D. N. Y. 1890).

[9] Hogan v. S. S. J. M. Danziger, 1938 Am. Mar. Cas. 685 (S. D. N. Y., 1937). But see contra, Lilly v. United States Lines Co., 42 F. Supp. 214 (S. D. N. Y., 1941).

[10] 295 Fed. 680 (C. C. A. 4, 1924).

[fol. 24] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT—October Term, 1941

No. 8011

DAVID E. JONES, Appellant,

WATERMAN STEAMSHIP CORPORATION, Appellee

JUDGMENT—September 21, 1942

On appeal from the District Court of the United States, for the Eastern District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed, and the case is remanded to the said District Court for further proceedings not inconsistent with the opinion of this court.

Goodrich, Circuit Judge.

September 21, 1942.

[File endorsement omitted.]

[fol. 25] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,

Eastern District of Pennsylvania,
Third Judicial Circuit, Set.:

I, WM. P. ROWLAND, Clerk of the United States Circuit Court of Appeals for the Third Circuit, Do Hereby Certify the foregoing to be a true and faithful copy of the original Appendix to Brief for Appellant, as constituting the portions of the *the* record before this court at argument; and proceedings in this court in the case of David E. Jones, Appellant, vs. Waterman Steamship Corporation, No. 8011, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 20th day of October in the year of our Lord one thousand nine hundred and forty-two, and of the Independence of the United States the one hundred and sixty-seventh.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

[fol. 26] In the Supreme Court of the United States

[Title omitted]

Stipulation as to Record—Filed Nov. 20, 1942

Subject To This Court's Approval, It Is Hereby Stipulated And Agreed by and between the attorneys for the respective parties hereto, that for the purpose of the petition for a writ of certiorari, the printed record may consist of the following:

1. The typewritten appendix to brief of David E. Jones as filed in the United States Circuit Court of Appeals for the Third Circuit;

2. The proceedings had before the United States Circuit Court of Appeals for the Third Circuit.

Dated at Philadelphia, Pa., this 19th day of November, 1942.

Joseph W. Henderson, Attorney for Waterman Steamship Company.

Dated at Philadelphia, Pa., this 19th day of November, 1942.

Abraham E. Freedman, Attorney for David E. Jones.

[fol. 27] Supreme Court of the United States, October Term, 1942

No. 582

Order Allowing Certiorari—Filed January 4, 1943.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

IN THE

Supreme Court of the United States

October Term, 1942.

No. 582.

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

v.

DAVID E. JONES,
Respondent.

Petition for Writ of Certiorari and Brief in Support Thereof.

JOSEPH W. HENDERSON,
GEORGE M. BRODHEAD, JR.,
Attorneys for Petitioner.

International, 236 Chestnut St., Philadelphia

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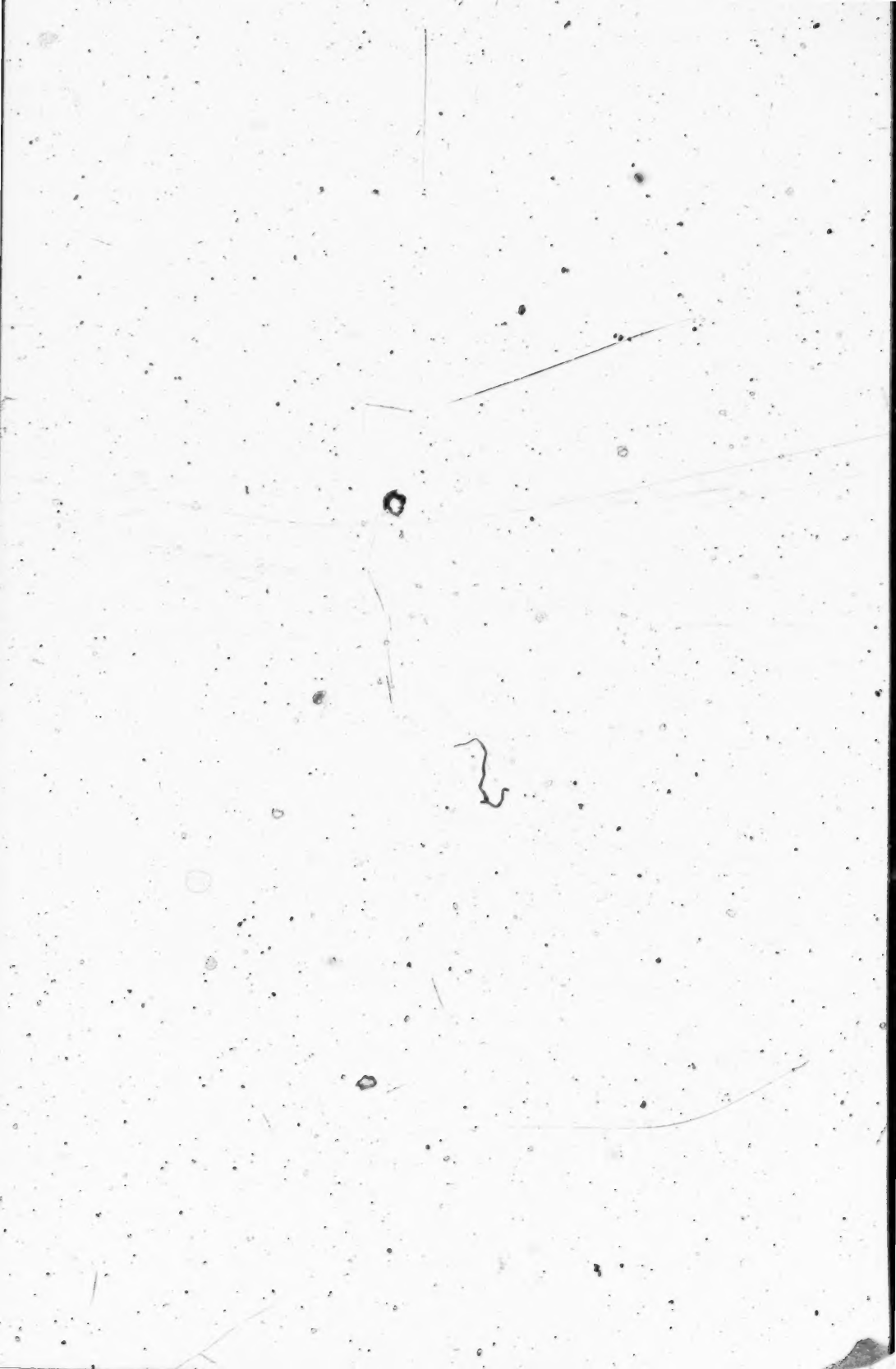

IN THE

Supreme Court of the United States.

October Term, 1942.

No.

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

v.

DAVID E. JONES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Waterman Steamship Corporation, prays that a writ of certiorari be issued to review a final judgment of the United States Circuit Court of Appeals for the Third Circuit entered on September 21, 1942, (R 15) which judgment reversed a final judgment of the District Court of the United States for the Eastern District of Pennsylvania dismissing the above-entitled case for failure to set forth a cause of action upon which relief could be granted (R. 7) and remanded the case for further proceedings (R. 15).

Summary and Statement of Matter Involved.

A civil action was instituted by the respondent in the District Court of the United States for the Eastern District of Pennsylvania to recover damages for maintenance and cure and wages to which the respondent, as a member of the crew of the SS. "Beauregard", claims to be entitled by reason of personal injuries sustained on January 16, 1941. (R. 2, 3.)

The circumstances of the accident, as set forth in respondent's Complaint, are as follows:

> "On or about the 16th day of January, 1941, at or about 5:50 P. M. o'clock and while the vessel was moored to Pier C, Port Richmond, Philadelphia, complainant, in the course of his employment left the vessel on shore leave and was proceeding through the pier towards the street when all the lights on the pier were extinguished and in the ensuing darkness fell into the open ditch at the railroad siding and sustained the injuries which are more specifically hereinafter set forth." (R. 2.)

The petitioner filed a Motion to Dismiss the Complaint for the reason that the respondent's Complaint did not set forth a claim upon which relief could be granted, as the respondent's alleged injury was not sustained while he was in the service of the vessel (R. 4).

After argument sur Motion to Dismiss Complaint, the aforesaid district court filed an opinion on December 5, 1941, granting the petitioner's motion and directing entry of judgment, (R. 4-7) and on December 5, 1941, judgment was entered in favor of the defendant and the case dismissed (R. 7).

An appeal was taken by the respondent to the United States Circuit Court of Appeals for the Third Circuit. After argument before Circuit Judges Jones and Goodrich

and District Judge Leahy, said court filed a decision reversing the judgment of the district court and remanding the case for further proceedings not inconsistent with said opinion. (R. 10-14.) The opinion was written by Circuit Judge Goodrich.

Jurisdiction.

The judgment of the United States Circuit Court of Appeals for the Third Circuit was entered September 21, 1942 (R. 15).

The jurisdiction of this Court to review said proceedings on a writ of certiorari is provided by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, § 1, 43 Stat. 928 (28 U. S. C. A., Section 347 (a)).

Opinions.

An opinion was filed on December 5, 1941, by the Honorable William H. Kirkpatrick. It is not reported.

The opinion of the United States Circuit Court of Appeals, written by Judge Goodrich, was filed on September 21, 1942, and is reported in 130 F. (2d) 797.

Question Presented.

Should a seaman receive maintenance and cure from his vessel and her owners when injured, not on board his vessel or in the service of his ship, but after he had left his ship on his own business and was proceeding through the pier to which his vessel was moored and over which pier neither his vessel nor her owners had any ownership, control or management?

Reasons for Granting Petition.

The petition should be granted because the United States Circuit Court of Appeals for the Third Circuit has

rendered a decision in conflict with a decision of the United States Circuit Court of Appeals for the Second Circuit on the same matter, *Aguilar v. Standard Oil Company of New Jersey*, 130 F. (2d) 154 (C. C. A. 2d, 1942) in which case your Honorable Court denied certiorari on November 16, 1942, and also because the decision of the Court-below is in apparent conflict with prior decisions of the United States Circuit Court of Appeals for the Ninth Circuit, *Todahl v. Sudden & Christensen*, 5 F. (2d) 462 (C. C. A. 9th, 1925); *Meyer v. Dollar Steamship Line*, 49 F. (2d) 1002 (C. C. A. 9th, 1931) and *Angco et al. v. Standard Oil Company of California*, 66 F. (2d) 929 (C. C. A. 9th, 1933).

The decision of the Court-below is likewise in conflict with unappealed decisions of district courts in other circuits, *Collins v. Dollar S. S. Lines, Inc.*, 23 F. Supp. 395 (D. C. S. D. N. Y. 1938); *The President Coolidge*, 23 F. Supp. 575 (D. C. N. D. Wash. 1938); *Smith v. American South African Line*, 37 F. Supp. 262 (D. C. S. D. N. Y. 1941); *Lilly v. United States Lines Co.*, 42 F. Supp. 214 (D. C. S. D. N. Y. 1941) and *Wahlgren v. Standard Oil Company of New Jersey*, 1941 A. M. C. 1788 (D. C. S. D. N. Y.).

The Court-below has decided an important question of federal law which has not been specifically decided, and should be settled, by your Honorable Court. Furthermore, the Court-below has decided an important question of federal law in a way which is probably in conflict with applicable decisions of your Honorable Court concerning a shipowner's liability for maintenance and cure and rights of a seaman with respect theerto. *The Osceola*, 189 U. S. 158 (1903); *Chelentis v. Luckenbach Steamship Company, Incorporated*, 247 U. S. 372 (1918); *Pacific Steamship Company v. Peterson*, 278 U. S. 130 (1928); and *Calmar Steamship Corp. v. Taylor*, 303 U. S. 525 (1938).

The determination of the question presented is of utmost importance to shipowners and their insurance carriers who heretofore were of the firm and settled opinion that a shipowner's liability for maintenance and cure was limited to the time when a seaman was in fact in the service of his ship and did not extend to injuries which the seaman received when away from his ship on shore leave and about his own personal and private business and pleasure. The decision of the Court-below in effect makes the shipowner an insurer of the health and safety of its seamen at all times (except when the injury is caused by the seaman's own wilful misconduct) irrespective of where the seaman may be at the time of the injury and irrespective of whether or not the shipowner has any control over the instrumentalities involved and irrespective of whether or not the shipowner could have prevented the injury even if it had attempted so to do. Such an obligation is beyond that which the law has imposed on a shipowner as an incident of the seaman's employment and is an unjustified extension of the established doctrine of maintenance and cure.

Respectfully submitted,

WATERMAN STEAMSHIP CORPORATION,

By JOSEPH W. HENDERSON,
Of Counsel.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

JOSEPH W. HENDERSON, being duly sworn according to law, deposes and says that he is counsel for the petitioner herein and that the facts set forth in the foregoing petition are true and correct to the best of his knowledge, information and belief.

JOSEPH W. HENDERSON.

Sworn to and subscribed before me this 8th day of December, A. D. 1942.

ETHEL S. SMITH,
Notary Public.

(Seal)

My Commission Expires Feb. 3, 1945.

I hereby certify that I have examined the foregoing petition and that in my opinion it is well founded and entitled to the favorable consideration of the Court and that it is not filed for the purpose of delay.

JOSEPH W. HENDERSON,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1942.

No.

WATERMAN STEAMSHIP CORPORATION,

Petitioner,

v.

DAVID E. JONES,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

For Opinions Below, Jurisdiction, Statement of the Matter Involved, and Questions Presented see pages 2 and 3 of the Petition.

ARGUMENT.

A Seaman Who Left His Ship on Shore Leave for His Own Business and Was Subsequently Injured While on Property of a Third Party Is Not Entitled to Maintenance and Cure.

The basis of the respondent's cause of action is set forth in Paragraph Five of his Complaint wherein he alleged:

"On or about the 16th day of January, 1941, at or about 5:50 P. M. o'clock and while the vessel was moored to Pier C, Port Richmond, Philadelphia, com-

plainant, in the course of his employment left the vessel on shore leave and was proceeding through the pier toward the street when all the lights on the pier were extinguished and in the ensuing darkness fell into the open ditch at the railroad siding and sustained the injuries which are more specifically hereinafter set forth." (Emphasis ours.) (R. 2.)

It is well established that "the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued". *The Osceola*, 189 U. S. 158 (1903), *Chelentis v. Luckenbach Steamship Company, Incorporated*, 247 U. S. 372 (1918); *Pacific Steamship Company v. Peterson*, 278 U. S. 130 (1928); and *Calmar Steamship Corp. v. Taylor*, 303 U. S. 525 (1938).

The Court-below erred both on authority and on reasoning in holding that the respondent was "in the service of the ship" after he had voluntarily left his vessel and was proceeding *on his own business* through the pier to which the vessel was moored and over which pier neither the petitioner nor its vessel had any ownership, control, or management.

The decision of the Court-below is in direct conflict with the case of *Aguilar v. Standard Oil Company of New Jersey*, 130 F. (2d) 154 (C. C. A. 2nd, 1942) in which case the identical question had already been determined and that decision has been approved by your Honorable Court as recently as November 16, 1942, by denial of plaintiff's petition for writ of certiorari. *Aguilar v. Standard Oil Company of New Jersey*, — U. S. —. In that case the plaintiff, whose ship was moored to a wharf, obtained leave

to go ashore to attend to personal business. About a half a mile away from the ship, the seaman, while returning to the vessel, was struck by a motor truck and injured. The Court held that the seaman was not in the service of his ship at the time of the accident and that he was therefore not entitled to maintenance and cure, stating that:

> "The outlines of the seaman's right to maintenance and cure have remained fairly constant from ancient times; until Congress sees fit to change its incidence, the court should enforce it as it is."

Any attempt to distinguish the *Aguilar* case from the instant case on the theory that the injuries in that case occurred about a half mile away from the ship, while in this case they occurred on the pier to which the ship was moored, is both illogical and unsound. Such a distinction is purely arbitrary and cannot form the basis of a sound judicial determination. Neither distance alone from the ship nor the fact that the accident occurred on a pier to which the ship was moored but over which neither the shipowner nor its vessel had any ownership, control, or management can be the determining factor. We can readily visualize piers covering many city blocks and extending over considerable territory.

The decision of the Court-below is also in apparent conflict with decisions of the Circuit Court of Appeals for the Ninth Circuit in which that court set forth the status of a seaman on shore leave (*Todahl v. Sudden & Christenson*, 5 F. (2d) 462 (C. C. A. 9th, 1925) and *Angco et al. v. Standard Oil Company of California*, 66 F. (2d) 929 (C. C. A. 9th, 1933)) and in which that court carefully discussed the test to determine whether or not a seaman was in the serv-

ice of his ship (*Meyer v. Dollar Steamship Line*, 49 F. (2d) 1002 (C. C. A. 9th, 1931)).

In *Todahl v. Sudden & Christenson, supra*, the seaman had been ashore on personal business and on his return was injured while crossing the wharf to which his vessel was moored. He sued the owners of his ship and the occupant of the wharf on two causes of action—one to recover under Section 33 of the Merchant Marine Act of June 5, 1920, 41 Stat. 1007, and the other to recover damages under the common law. The demurrer of the shipowners was sustained, and, on appeal, although the specific question of cure and maintenance was not discussed, the Court in affirming the judgment for the shipowners stated on page 464:

> ". . . here the plaintiff, in voluntarily going ashore, and thus by his own act making his return necessary, was not doing that which his contract of employment bound him to do. The owners of the steamship owed him the duty of providing a safe place in which to perform his work as a seaman. That duty did not extend to his protection when going beyond the premises of his employment for purposes of his own and over premises of which his employers had not dominion or control."

In *Angco et al. v. Standard Oil Company of California, supra*, the chief engineer, while on shore leave, was involved in an automobile accident while driving the shipowner's car. The Court, in denying recovery in an action against the company, described on page 930 the status of a seaman on shore leave, as follows:

> "When Warner left the ship at Kahului he was off duty, upon pleasure bound, and was beyond the scope of his employment. Unless some unforeseen emer-

gency arose he would not again come within the scope of his employment until he returned to the vessel. He was under no instructions to perform any service in any way connected with his employment; his sole responsibility, to return to his ship before she sailed, was a personal one."

In *Meyer v. Dollar Steamship Line, supra,* the seaman, who was not on watch, was injured while engaging in a friendly scuffle with a fellow seaman on board his vessel. The Court, in interpreting the phrase "in the service of the ship", considered its close analogy to the phrase "in line of duty" as applied to soldiers and sailors in the service of the United States and denied recovery for maintenance and cure on the ground that the seaman was not in the service of his ship.

The following decisions of district courts, whose decisions have not been appealed, have uniformly held that under circumstances similar to that involved herein a seaman is not entitled to maintenance and cure.

In *Collins v. Dollar S. S. Line, Inc., Limited,* 23 F. Supp. 395 (D. C. S. D. N. Y. 1938) the libellant, together with other members of the crew of his vessel, engaged in a game of baseball ashore while the vessel was lying in the Port of Singapore. The libellant was injured during the course of the game.

In *The President Coolidge,* 23 F. Supp. 575 (D. C. N. D. Wash. 1938) the libellant, while working as a seaman on his vessel, went ashore to the offices of the shipowners for the purpose of answering a long distance telephone call from his wife. Returning to the vessel, the seaman started to ascend a ladder which was made fast to the dock when he received certain injuries.

In *Smith v. American South African Line, Inc.*, 37 F. Supp. 262 (D. C. S. D. N. Y. 1941) the plaintiff, while at Beira, Africa, obtained leave to go ashore for purposes of his own. When about two miles away from the ship and in the course of returning to his vessel the seaman was struck by a motorcycle and injured.

In *Lilly v. United States Lines Co.*, 42 F. Supp. 214 (D. C. S. D. N. Y. 1941) the plaintiff had gone ashore to exchange a pair of gloves which he had previously purchased. He returned to his vessel early in the evening. The port at that time was blacked out because of wartime regulations, and the plaintiff, who was sober, in an effort to find the gangplank, fell from the dock into the water.

In *Wahlgren v. Standard Oil Company of New Jersey*, 1941 A. M. C. 1788 (D. C. S. D. N. Y.) the seaman had left his vessel on shore leave and was injured while riding in a truck about a quarter of a mile from the dock gate.

All five of the aforesaid district court cases were cited and approved by the United States Circuit Court of Appeals for the Second Circuit in its decision in *Aguilar v. Standard Oil Company, supra.*

We know of no decision extending the right of recovery by a seaman for maintenance and cure to the extent allowed in this proceeding. The decision, if not reversed, will represent an extreme departure from established principles governing recovery for maintenance and cure.

The limitation on the seaman's right to maintenance and cure has been succinctly expressed in Benedict on Admiralty Vol. 1 (6th Edition, 1940) on page 254: "Sickness or injury occasioned while off duty ashore or by the seaman's own wilful wrongdoing give him no rights against the vessel or her owners". The respondent's case falls clearly within the established exception.

The two cases which might be cited as indicating a contrary rule do not justify such a classification. The doubtful exception of *Hogan v. SS. J. M. Danziger*, 1938 A. M. C. 685 (D. C. E. D. N. Y. 1938), if in conflict, was overruled by the *Aguilar* case. The old case of *Reed v. Canfield*, 20 Fed. Cas. 426 (Case No. 11,641) (C. C. D. Mass. 1832), also cited by the Court-below but ably distinguished by the district court in its opinion, "clearly does not reach the facts in the present case". (R. 6.) In the *Reed* case, the seaman together with other members of the crew, pursuant to orders, had rowed the ship's mates from the vessel's anchorage to shore. The seaman was injured when he and his fellow seamen, after having spent several hours on shore with the permission of the ship's mates, were rowing the boat back to their ship. At the time of his injuries the seaman was actually engaged in carrying out orders issued to him by his mates and, therefore, in the service of his ship.

In the absence of circumstances showing that he was in fact within the call of duty and subject to orders, a seaman when away from his ship on shore leave cannot be said to be continuously in the service of his ship. This distinction was recognized by the district court when Judge Kirkpatrick stated in his opinion that ". . . the complaint in this case shows nothing but 'shore leave', and, as stated, implies nothing more than an obligation to return to the ship at some specified time". (R. 6.)

As stated by Judge Kirkpatrick in his opinion, "on shore leave he may go wherever he pleases, and if he goes where he cannot be reached he is to all practical intents and purposes exempt from any call to serve the ship until he returns; and whatever his general obligation, he is actually beyond the power and authority of the ship's officers". (R. 6.)

The United States Circuit Court of Appeals for the Third Circuit endeavored to justify its decision by distinguishing the *Meyer* case from the instant case and restricting the holding in the instant case to "the question of the seaman's rights with regard to injury suffered in the area immediately adjacent to his place of work through which he, of necessity, had to pass in going or coming" and left "open for decision when the case arises, what might be the legal liability if this plaintiff, having left the pier safely, had been hit by a truck on the public streets of Philadelphia", (*Smith v. American South African Line, Inc., supra*) or "if he sprained his ankle playing baseball on shore", (*Collins v. Dollar S. S. Lines, Inc., Limited, supra*).

We fail to see any distinction between an accident occurring on the premises adjacent to the seaman's vessel over which the vessel had no dominion and an accident occurring several miles away from his vessel when the seaman in each instance is on shore leave and on and about his own business. The proximity of the vessel to the place of the accident should not be the determining factor. Rather, the shipowner's liability is dependent solely on the question whether or not the seaman at the time of the accident was on his own personal business and pleasure or carrving out an order of the officers of the ship. In the former situation, clearly the seaman is not "in the service of the ship".

Cure and maintenance is recoverable for injuries sustained while a seaman is in the service of his ship, irrespective of fault or negligence, because the seaman is entitled, by the peculiar relationship which he has assumed, to such protection in the performance of services required

by the officers of the ship. The shipowner, having dominion and control over the vessel, is, and should be, in a position to see that proper protection at all times is available for the health and safety of the seaman who has entrusted his safekeeping to the officers of the ship. However, when a seaman leaves the ship on shore leave, the reason for the rule disappears, for the shipowner and the officers of the ship have no control whatever of the premises over which a seaman travels when ashore and are consequently unable to protect the seaman in any way. In this case the respondent was injured because the lights on the pier through which he was passing were extinguished and he was caused to fall into the open ditch because of the ensuing darkness. (R. 2.) The petitioner in this case had no more control over the lights on the pier and their subsequent extinguishment than the shipowner in the *Aguilar* case had over the operation of the motor truck which struck that seaman, and in both cases the shipowner had no control whatsoever over the actions of the seaman himself. It is immaterial whether the place where the seaman is injured happened to be adjacent to the vessel or located at a great distance away. In each instance, the officers of the ship have no control either of the instrumentality with which the seaman may come in contact, or of the actions of the seaman himself, and in each case the liability of the ship and the shipowner should be the same. However, in either case, the seaman is not without relief, for he may recover damages from a third party because of its negligence just as the respondent is now attempting to do by suit against the owner of the pier. *Jones v. Reading Co.*, 45 F. Supp. 566 (D. C. E. D. Pa. 1942).

The shipowner is not an insurer of the health and safety of a seaman at all times during the voyage. Main-

tenance and cure has been denied seamen when the injury was due to intoxication, *The SS. Berwindglen*, 88 F. (2d) 125 (C. C. A. 1st, 1937), and *Barlow v. Pan Atlantic S. S. Corporation*, 101 F. (2d) 697 (C. C. A. 2nd, 1939); when due to venereal diseases and gross acts of indiscretion, *The Alector*, 263 Fed. 1007 (D. C. E. D. Va. 1920); when due to a personal fight, *Lortie v. Amended Hawaiian Steamship Company*, 78 F. (2d) 819 (C. C. A. 9th, 1935); *Yukes v. Globe S. S. Corp.*, 107 F. (2d) 888 (C. C. A. 6th, 1939); and when due to wilful misconduct, *Oliver v. Calmar S. S. Co.*, 33 F. Supp. 356 (D. C. E. D. Pa. 1940). The only duty which the shipowner and his vessel owe to a seaman, so far as maintenance and cure is concerned, is similar to that afforded employees by workmen's compensation laws, namely, to provide a safe place for the seaman to perform his work wheresoever that work is to be done. Moreover if the respondent were seeking relief under The Pennsylvania Workmen's Compensation Act of June 21, 1939, P. L. 520 (77 P. S. §§1-1023), he would not be entitled to receive compensation. As humanitarian and liberal as is that act and similar state workmen's compensation laws, compensation is only payable to an employee who is injured beyond the premises of his employer if that employee is *actually* engaged in the furtherance of the business or affairs of his employer. *Maguire v. James Lees and Sons Co.*, 273 Pa. 85, 116 Atl. 679 (1922); *Palko v. Taylor-McCoy Coal & Coke Co.*, 289 Pa. 401, 137 Atl. 625 (1927).

We, therefore, submit that the decision of the Court below in holding that the respondent has stated a good cause of action for cure and maintenance is contrary to applicable decisions of your Honorable Court relating to a seaman's right to cure and maintenance and in direct con-

flict with the decisions of circuit courts of appeals and of the district courts hereinbefore set forth.

The petitioner's prayer for a writ of certiorari should therefore be granted.

Respectfully submitted,

JOSEPH W. HENDERSON,
GEORGE M. BRODHEAD, JR.,
Attorneys for Petitioner.

Philadelphia, Pa.
December 8, 1942.

IN THE

Supreme Court of the United States

October Term, 1942.

No. 582.

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

v.

DAVID E. JONES,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR PETITIONER

JOSEPH W. HENDERSON,
GEORGE M. BRODHEAD, JR.,
Attorneys for Petitioner.

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IN THE

Supreme Court of the United States.

October Term, 1942.

No. 582.

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

v.

DAVID E. JONES,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR PETITIONER.

This case comes before the Court on writ of certiorari issued to review a final judgment of the United States Circuit Court of Appeals for the Third Circuit.

OPINIONS BELOW.

An opinion was filed on December 5, 1941, by the Honorable William H. Kirkpatrick (R. 4-7). It is not reported.

The opinion of the United States Circuit Court of Appeals, written by Judge Goodrich, was filed on September 21, 1942 (R. 10-14), and is reported in 130 F. (2d) 797.

JURISDICTION.

The jurisdiction of this Court to review the final judgment of the United States Circuit Court of Appeals for the

Third Circuit on a writ of certiorari is provided by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, § 1, 43 Stat. 938 (28 U. S. C. A., Section 347 (a)).

The final judgment of the United States Circuit Court of Appeals for the Third Circuit was entered September 21, 1942 (R. 15). Petition for writ of certiorari was granted by this Court on January 4, 1943 (R. 17).

STATEMENT OF THE CASE.

A civil action was instituted by the respondent in the District Court of the United States for the Eastern District of Pennsylvania to recover damages for maintenance and cure and wages to which the respondent, as a member of the crew of the SS. "Beauregard", claims to be entitled by reason of personal injuries sustained on January 16, 1941. (R. 2, 3.)

The circumstances of the accident, as set forth in respondent's Complaint, are as follows:

> "On or about the 16th day of January, 1941, at or about 5:50 P. M. o'clock and while the vessel was moored to Pier C, Port Richmond, Philadelphia, complainant, in the course of his employment left the vessel on shore leave and was proceeding through the pier towards the street when all the lights on the pier were extinguished and in the ensuing darkness fell into the open ditch at the railroad siding and sustained the injuries which are more specifically hereinafter set forth." (R. 2.)

The petitioner filed a Motion to Dismiss the Complaint for the reason that the respondent's Complaint did not set forth a claim upon which relief could be granted, as the

respondent's alleged injury was not sustained while he was in the service of the vessel (R. 4).

After argument sur Motion to Dismiss Complaint, the aforesaid District Court filed an opinion on December 5, 1941, granting the petitioner's motion and directing entry of judgment, (R. 4-7) and on December 5, 1941, judgment was entered in favor of the defendant and the case dismissed (R. 7).

An appeal was taken by the respondent to the United States Circuit Court of Appeals for the Third Circuit. After argument before Circuit Judges Jones and Goodrich and District Judge Leahy, said court filed a decision reversing the judgment of the District Court and remanding the case for further proceedings not inconsistent with said opinion. (R. 10-14.) The opinion was written by Circuit Judge Goodrich.

Petition for writ of certiorari to review said final judgment was granted by your Honorable Court on January 4, 1943 (R. 17).

SPECIFICATION OF ERRORS INTENDED TO BE URGED.

The petitioner intends to urge the errors assigned in its Petition for Writ of Certiorari, which errors are more particularly set forth therein under "Questions Presented", i. e., those errors relating to the question whether a seaman may receive maintenance and cure from his vessel and her owners when injured, not on board his vessel or in the service of his ship, but after he had left his ship on his own business and was proceeding through the pier to which his vessel was moored and over which pier neither his vessel nor her owners had any ownership, control or management.

QUESTION PRESENTED.

Should a seaman receive maintenance and cure from his vessel and her owners when injured, not on board his vessel or in the service of his ship, but after he had left his ship on his own business and was proceeding through the pier to which his vessel was moored and over which pier neither his vessel nor her owners had any ownership, control or management?

ARGUMENT.

A Seaman Who Left His Ship on Shore Leave for His Own Business and Was Subsequently Injured While on Property of a Third Party Is Not Entitled to Maintenance and Cure.

The respondent, a seaman on the SS. "Beauregard", instituted suit to recover damages for cure and maintenance and wages to which he claimed he was entitled because of personal injuries sustained while on shore leave on and about his own personal business.

The basis of the respondent's cause of action is set forth in Paragraph Five of his Complaint wherein he alleged:

> "On or about the 16th day of January, 1941, at or about 5:50 P. M. o'clock and while the vessel was moored to Pier C, Port Richmond, Philadelphia, complainant, in the course of his employment left the vessel on shore leave and was proceeding through the pier toward the street when all the lights on the pier were extinguished and in the ensuing darkness fell into the open ditch at the railroad siding and sustained the injuries which are more specifically hereinafter set forth." (Emphasis ours.) (R. 2.)

The petitioner filed a Motion to Dismiss the Complaint for the reason that the respondent's Complaint did not set forth a claim upon which relief could be granted, as the respondent's alleged injury was not sustained while he was in the service of the vessel (R. 4).

The District Court properly held that the respondent was not in the service of his ship at the time of his alleged injuries and, therefore, dismissed respondent's Complaint.

(R. 1, 4-6.) The United States Circuit Court of Appeals for the Third Circuit on appeal ruled otherwise on the erroneous theory that the respondent was entitled to recovery because he was injured "in the area immediately adjacent to his place of work through which he, of necessity, had to pass in going or coming". (R. 13.) The Court below in so ruling committed a reversible error, as said decision constitutes an unjustified extension of the established doctrine of maintenance and cure.

It is well established that "the vessel and her owners are liable, in case a seaman falls sick, or is wounded, *in the service of the ship*, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued". *The Osceola*, 189 U. S. 158 (1903), *Chelentis v. Luckenbach Steamship Company, Incorporated*, 247 U. S. 372 (1918); *Pacific Steamship Company v. Peterson*, 278 U. S. 130 (1928); *Calmar Steamship Corp. v. Taylor*, 303 U. S. 525 (1938); *O'Donnell v. Great Lakes Dredge and Dock Company*, — U. S. — (decided February 1, 1943, but unreported). (Italics ours.)

This rule was formulated by your Honorable Court in *The Osceola, supra*, after a consideration of the Rules of Oleron, the Laws of Wisbuy, the Laws of the Hanse Towns, the Marine Ordinances of Louis XIV, the English Merchants' Shipping Act, and the Continental Codes.

That part of the rule which specifies that the injury must be "in the service of the ship" has not been modified, so far as we have been able to ascertain, but, on the contrary, it has been consistently followed. *Pacific Steamship Co. v. Peterson, supra; The Bouker No. 2*, 241 Fed. 831 (C. C. A. 2nd, 1917).

For centuries, a seaman who has gone ashore on his own personal business has not been considered "in the

service of the ship". For example, Article XVIII of the Laws of Wisbuy (13th Century), referred to in *The Osceola, supra* at 169 and quoted at length in *The S. S. Berwindglen*, 88 F. (2d) 125, 128 (C. C. A. 1st, 1937) provided:

> "A mariner being ashore in the master's or the ship's service, if he should happen to be wounded, he shall be maintained and cured at the charge of the ship; but if he goes ashore on his own head to be merry, and divert himself, or otherwise, and happens to be wounded, the master may turn him off; and the mariner shall be obliged to refund what he has received, and besides to pay what the master shall be forced to pay over and above to another whom he shall hire in his place."

This limitation on a seaman's right to maintenance and cure is still the law and is so stated in 1 Benedict on Admiralty (6th Ed. 1940) 254:

> "Sickness or injury occasioned while off duty ashore or by the seaman's own wilful wrongdoing give him no rights against the vessel or her owners."

The respondent's case falls clearly within this established exception.

After the respondent had voluntarily left his vessel and was proceeding *on his own business* through the pier to which the vessel was moored and over which pier neither the petitioner nor its vessel had any ownership, control or management, he certainly was not then "in the service of the ship".

While your Honorable Court has not specifically decided the question as to whether a seaman may recover maintenance and cure under facts stated in the respondent's Complaint, numerous district courts as well as the United

States Circuit Court of Appeals for the Second Circuit[1] have denied such recovery. Furthermore, the status of a seaman on shore leave, so far as it relates to the shipowner's liability to him and for his actions, has heretofore been adjudicated by decisions of the United States Circuit Court of Appeals for the Ninth Circuit.

A review of these decisions will show that the Court below erred both on authority and on reasoning in holding that the respondent was "in the service of the ship" at the time of his accident.

In *Collins v. Dollar S. S. Lines, Inc., Limited*, 23 F. Supp. 395 (D. C. S. D. N. Y. 1938) the libellant, together with other members of the crew of his vessel, engaged in a game of baseball ashore while the vessel was lying in the Port of Singapore. The libellant was injured during the course of the game. Exceptions to the libel were sustained, the Court saying on page 397:

> "It is reasonable and logical to say that if injured in the ship's service the seaman shall be cared for by the ship. *To extend the obligation of the ship beyond this so as to require it to provide maintenance and cure for one who was injured on shore while engaged in his personal affairs would be to place an unfair burden upon the ship and would relieve the seaman of the risk that he himself should properly assume. I find no authority which would justify recovery of maintenance and cure by the libelant.*
>
> "The libelant was injured outside the course of his employment, and was unable to return to work before the voyage ended so he is not entitled to wages while incapacitated." (Italics ours.)

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[1] Said decision is now under review by your Honorable Court upon a writ of certiorari. *Aguilar v. Standard Oil Company of New Jersey*, — U. S. — (certiorari granted January 4, 1943).

In *The President Coolidge*, 23 F. Supp. 575 (D. C. N. D. Wash. 1938) the libellant, while working as a seaman on his vessel, went ashore to the offices of the shipowners for the purpose of answering a long distance telephone call from his wife. Returning to the vessel, the seaman started to ascend a ladder which was made fast to the dock when he received certain injuries. The libellant was refused maintenance and cure, the Court stating on page 576:

> "To *entitle Libelant to recover he must show that he received his injury while engaged in an act of labor in the discharge of the obligations of his employment.* If the injury occurred after Libelant left the labor in which he was engaged in the discharge of the obligation of his employment and while responding to a telephone call on behalf of his wife, which he expected, and while in discharge of that (all a personal matter) an 'act not in the service of the ship' he may not recover for the injury. *The injury was the result of the Libelant's free act and conscious motion of his own will, apart from any obligation of his employment. Meyer v. Dollar Steamship Line*, D. C., 43 F. 2d 425, 426, affirmed, 9 Cir., 49 F. 2d, 1002. The facts in the instant case are clearly within the rule announced by this court 43 F. 2d, supra, affirmed by the Circuit Court of Appeals, 49 F. 2d, supra. When the Libelant laid down his hammer on telephone call, and left the engine room, and proceeded to the telephone office, *he was consciously and voluntarily pursuing a personal matter, an act that was not in the service of the ship.*" (Italics ours.)

In *Smith v. American South African Line, Inc.*, 37 F. Supp. 262 (D. C. S. D. N. Y. 1941) the plaintiff, while at Beira, Africa, obtained leave to go ashore for purposes of his own. When about two miles away from the ship and

in the course of returning to his vessel the seaman was struck by a motorcycle and injured. The seaman's Complaint for maintenance and cure and wages was dismissed.

In *Lilly v. United States Lines Co.*, 42 F. Supp. 214 (D. C. S. D. N. Y. 1941) the plaintiff, a member of the crew, not being on duty, went ashore in the late afternoon to exchange a pair of gloves which he had previously purchased at Le Havre, France. He returned to his vessel early in the evening. It was already dark and, as France was at war, the Port of Le Havre was blacked out. When the plaintiff, who was sober, reached the dock where the vessel was berthed, he attempted to find the gangplank, but fell from the dock into the water. The dock was not controlled by the defendant, and there were no guards, lines, or other means of protection on the dock. The Court granted summary judgment for the defendant and, in denying the plaintiff recovery for cure and maintenance, stated on page 215:

> "As to the second claim based upon maintenance and cure, I am of the opinion that the plaintiff was not injured while 'in the service of the ship'. *Smith v. American South African Line*, D. C., 37 F. Supp. 262, 1941 A. M. C. 212; *The Berwindglen*, 1 Cir., 88 F. 2d 125; *Barlow v. Pan Atlantic and Waterman S. S. Co.*, 2 Cir., 101 F. 2d 697."

In *Wahlgren v. Standard Oil Company of New Jersey*, 1941 A. M. C. 1788 (D. C. S. D. N. Y.) the seaman had left his vessel on shore leave and was injured while riding in a truck about a quarter of a mile from the dock gate. The seaman in his suit under the Jones Act included a claim for maintenance and cure. The Court, in granting summary judgment for the defendant, said on page 1789:

> "Neither can the claim for maintenance and cure be upheld. The plaintiff was not injured in the service

of the ship but while engaged on shore in purely personal pursuits."

In *Aguilar v. Standard Oil Company of New Jersey*, 130 F. (2d) 154 (C. C. A. 2nd, 1942) (certiorari granted on January 4, 1943, — U. S. —) the identical question was determined in favor of the shipowner, and all five of the aforesaid district court cases were cited and approved.

In the *Aguilar* case the plaintiff, whose ship was moored to a wharf, obtained leave to go ashore to attend to personal business. About a half a mile away from the ship, the seaman, while returning to the vessel, was struck by a motor truck and injured. The Court held that the seaman was not in the services of his ship at the time of the accident and that he was therefore not entitled to maintenance and cure, stating on page 155 that:

> "The outlines of the seaman's right to maintenance and cure have remained fairly constant from very ancient times; until Congress sees fit to change its incidents, the courts should enforce it as it is; . . ."

The status of a seaman on shore leave and the liability of the shipowner to and for him during such time has also been considered by the United States Circuit Court of Appeals for the Ninth Circuit.

In *Todahl v. Sudden & Christenson*, 5 F. (2d) 462 (C. C. A. 9th, 1925), the seaman had been ashore on personal business and on his return was injured while crossing the wharf to which his vessel was moored. He sued the owners of his ship and the occupant of the wharf on two causes of action—one to recover under Section 33 of the Merchant Marine Act of June 5, 1920, 41 Stat. 1007, and the other to recover damages under the common law. The demurrer

of the shipowners was sustained, and, on appeal, although the specific question of cure and maintenance was not discussed, the Court in affirming the judgment for the shipowners stated on page 464:

> ". . . here the plaintiff, in voluntarily going ashore, and thus by his own act making his return necessary, was not doing that which his contract of employment bound him to do. The owners of the steamship owed him the duty of providing a safe place in which to perform his work as a seaman. That duty did not extend to his protection when going beyond the premises of his employment for purposes of his own and over premises of which his employers had no dominion or control."

In *Angco et al. v. Standard Oil Company of California*, 66 F. (2d) 929 (C. C. A. 9th, 1933), the chief engineer, while on shore leave, was involved in an automobile accident while driving the shipowner's car. The Court, in denying recovery in an action against the company, described on page 930 the status of a seaman on shore leave, as follows:

> "When Warner left the ship at Kahului he was off duty, upon pleasure bound, and was beyond the scope of his employment. Unless some unforeseen emergency arose he would not again come within the scope of his employment until he returned to the vessel. He was under no instructions to perform any service in any way connected with his employment; his sole responsibility, to return to his ship before she sailed, was a personal one."

See also *Meyer v. Dollar Steamship Line*, 49 F. (2d) 1002 (C. C. A. 9th, 1931) in which the Court carefully discussed the test to determine whether or not a seaman was

in the service of his ship. In the *Meyer* case the seaman, who was not on watch, was injured while engaging in a friendly scuffle with a fellow seaman on board his vessel. The Court, in interpreting the phrase "in the service of the ship", considered its close analogy to the phrase "in line of duty" as applied to soldiers and sailors in the service of the United States and denied recovery for maintenance and cure on the ground that the seaman was not in the service of his ship.

We know of no decision extending the right of recovery by a seaman for maintenance and cure to the extent allowed in this proceeding. The decision, if not reversed, will represent an extreme departure from established principles governing recovery for maintenance and cure.

The two cases which might be cited as indicating a contrary rule do not justify such a classification. Furthermore, if the doubtful exception of *Hogan v. SS. J. M. Danziger*, 1938 A. M. C. 685 (D. C. E. D. N. Y. 1938), is in conflict it has been overruled by the *Aguilar* case. In the *Hogan* case the libellant alleged "that an injury ashore was sustained while libellant was in the service of the ship and walking over the property at which his vessel was berthed to go aboard and take up his 4.00 p. m. watch". This allegation made no mention of "shore leave", and, although the question was considered a close one, the pleading was held sufficient and the respondent's exceptions were overruled. The old case of *Reed v. Canfield*, 20 Fed. Cas. 426 (Case No. 11,641) (C. C. D. Mass. 1832), also cited by the Court below but ably distinguished by the District Court in its opinion, "clearly does not reach the facts in the present case". (R. 6.) In the *Reed* case, the seaman together with other members of the crew, pursuant to orders, had rowed the ship's mates from the vessel's anchorage to

shore. The seaman was injured when he and his fellow seamen, after having spent several hours on shore with the permission of the ship's mates, were rowing the boat back to their ship. At the time of his injuries the seaman was actually engaged in carrying out orders issued to him by his mates and, therefore, in the service of his ship.

Any attempt to distinguish the *Aguilar* case, the *Collins* case, the *Smith* case and the *Wahlgren* case from the instant case on the theory that the injuries in those cases occurred at a considerable distance from the ship, while in this case they occurred on the pier to which the ship was moored, is both illogical and unsound. Such a distinction is purely arbitrary and cannot form the basis of a sound judicial determination. Neither distance alone from the ship nor the fact that the accident occurred on a pier to which the ship was moored but over which neither the shipowner nor its vessel had any ownership, control, or management can be the determining factor. We can readily visualize piers covering many city blocks and extending over considerable territory. Moreover, in *The President Coolidge* and in the *Lilly* case the injuries to the seaman occurred on or about the dock and recovery was denied notwithstanding the proximity of the vessel to the place of accident.

"In the service of the ship", both on reason and authority, includes what happens to seamen aboard the ship irrespective of whether or not they be on active duty, subject to recognized exceptions; but, when seamen are off the ship, it extends solely to those seamen who are on the business of the ship and not on their own personal business or on shore leave.

A seaman when away from his ship on shore leave cannot, in the absence of circumstances showing that he was in fact within the call of duty and subject to orders, be said to be continuously in the service of his ship. This distinction was recognized by the District Court when Judge Kirkpatrick stated in his opinion that ". . . the complaint in this case shows nothing but 'shore leave', and, as stated, implies nothing more than an obligation to return to the ship at some specified time". (R. 6.)

As stated by Judge Kirkpatrick in his opinion, "on shore leave he may go wherever he pleases, and if he goes where he cannot be reached he is to all practical intents and purposes exempt from any call to serve the ship until he returns; and whatever his general obligation, he is actually beyond the power and authority of the ship's officers". (R. 6.)

The United States Circuit Court of Appeals for the Third Circuit endeavored to justify its decision by distinguishing the *Meyer* case from the instant case and restricting the holding in the instant case to "the question of the seaman's rights with regard to injury suffered in the area immediately adjacent to his place of work through which he, of necessity, had to pass in going or coming" and left "open for decision when the case arises, what might be the legal liability if this plaintiff, having left the pier safely, had been hit by a truck on the public streets of Philadelphia", (*Smith v. American South African Line, Inc., supra*) or "if he sprained his ankle playing baseball on shore", (*Collins v. Dollar S. S. Lines, Inc., Limited, supra*). (R. 13.)

We fail to see any distinction between an accident occurring on the premises adjacent to the seaman's vessel

over which the vessel had no dominion and an accident occurring several miles away from his vessel when the seaman in each instance is on shore leave and on and about his own business. The proximity of the vessel to the place of the accident should not be the determining factor. Rather, the shipowner's liability is dependent solely on the question whether or not the seaman at the time of the accident was on his own personal business and pleasure or carrying out an order of the officers of the ship. In the former situation, clearly the seaman is not "in the service of the ship".

Cure and maintenance is recoverable for injuries sustained while a seaman is in the service of his ship, irrespective of fault or negligence, because the seaman is entitled, by the peculiar relationship which he has assumed, to such protection in the performance of services required by the officers of the ship. The shipowner, having dominion and control over the vessel, is, and should be, in a position to see that proper protection at all times is available for the health and safety of the seaman who has entrusted his safekeeping to the officers of the ship. However, when a seaman leaves the ship on shore leave, the reason for the rule disappears, for the shipowner and the officers of the ship have no control whatever of the premises over which a seaman travels when ashore and are consequently unable to protect the seaman in any way. Whereas, on the contrary, they do have control over their ship. In this case the respondent was injured because the lights on the pier through which he was passing were extinguished and he was caused to fall into the open ditch because of the ensuing darkness. (R. 2.) The petitioner in this case had no more control over the pier and the conditions on the

pier, including the lights on the pier and their subsequent extinguishment, than the shipowner in the *Aguilar* case had over the operation of the motor truck which struck that seaman, and in both cases the shipowner had no control whatsoever over the actions of the seaman himself. It is immaterial whether the place where the seaman is injured happened to be adjacent to the vessel or located at a great distance away. In each instance, the officers of the ship have no control either of the instrumentality with which the seaman may come in contact, or of the actions of the seaman himself, and in each case the liability of the ship and the shipowner should be the same. However, in either case, the seaman is not without relief, for he may recover damages from a third party because of its negligence just as the respondent is now attempting to do by suit against the owner of the pier. *Jones v. Reading Co.*, 45 F. Supp. 566 (D. C. E. D. Pa. 1942).

The shipowner is not an insurer of the health and safety of a seaman at all times during the voyage. Maintenance and cure has been denied seamen when the injury was due to intoxication, *The SS. Berwindglen*, 88 F. (2d) 125 (C. C. A. 1st, 1937), and *Barlow v. Pan Atlantic S. S. Corporation*, 101 F. (2d) 697 (C. C. A. 2nd, 1939); when due to venereal diseases and gross acts of indiscretion, *The Alector*, 263 Fed. 1007 (D. C. E. D. Va. 1920); when due to a personal fight, *Lortie v. American Hawaiian Steamship Company*, 78 F. (2d) 819 (C. C. A. 9th, 1935); *Yukes v. Globe S. S. Corp.*, 107 F. (2d) 888 (C C. A. 6th, 1939); and when due to wilful misconduct, *Oliver v. Calmar S. S. Co.*, 33 F. Supp. 356 (D. C. E. D. Pa. 1940). The only duty which the shipowner and his vessel owe to a seaman, so far as maintenance and cure is concerned, is similar to

that afforded employees by workmen's compensation laws, namely, to provide a safe place for the seaman to perform his work wheresoever that work is to be done. Moreover if the respondent were seeking relief under The Pennsylvania Workmen's Compensation Act of June 21, 1939, P. L. 520 (77 P. S. §§ 1-1023), he would not be entitled to receive compensation. As humanitarian and liberal as is that act and similar state workmen's compensation laws, compensation is only payable to an employee who is injured beyond the premises of his employer if that employee is *actually* engaged in the furtherance of the business or affairs of his employer. *Maguire v. James Lees and Sons Co.*, 273 Pa. 85, 116 Atl. 679 (1922); *Palko v. Taylor-McCoy Coal & Coke Co.*, 289 Pa. 401, 137 Atl. 625 (1927).

Not only is there no authority to support the respondent's contention in this case, but we see no reason why a vessel should have the added burden of taking care of a seaman when he is injured ashore in any place where he may voluntarily choose to go or while he voluntarily engages in personal activities of his own selection. The respondent in going ashore was consciously and voluntarily acting for his own account and the cause of his injury, to wit, the extinguishing of the lights on the pier, was totally unrelated to his employment and was clearly beyond the control of the petitioner. The respondent had disassociated himself physically from the vessel and had placed himself beyond any occurrence normally incident to the operation of a ship which might or could cause his injury. Moreover, as held by the District Court, he had effectively removed himself from the call of duty. (R. 6.)

CONCLUSION.

We, therefore, submit that the judgment of the Court below should be reversed and a judgment of dismissal should be entered in favor of the petitioner.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1942.

No. 582.

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

v.

DAVID E. JONES,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF ON BEHALF OF RESPONDENT ON WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States.

No. 582. October Term, 1942.

WATERMAN STEAMSHIP CORPORATION,

Petitioner,

v.

DAVID E. JONES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT.

STATEMENT OF THE CASE.

This is an action by a seaman, the respondent here, to recover the cost of maintenance and cure. Respondent signed on under coastwise articles in New Orleans, La., for a voyage to East Coast and Gulf ports of the United States, for a period of twelve months (R. 2). The vessel called at the port of Philadelphia in the course of the voyage and on January 16, 1941, while it was moored to Pier C, Port Richmond, Philadelphia, respondent obtained shore leave. He descended from the vessel to the dock and was proceeding through the pier toward the street when all of the lights on the pier were extinguished and in the ensuing darkness he fell into a railroad siding and sustained certain injuries, as a result of which he was compelled to seek treatment ashore. He was unable to rejoin the vessel and complete the voyage (R. 2, 3).

This suit was thereafter brought to recover the cost of respondent's maintenance and cure and wages. Petitioner thereupon moved to dismiss the action upon the ground that at the time of the injury respondent was on shore and not in the service of the ship. The District Judge granted the motion to dismiss. On appeal to the United States Circuit Court of Appeals that judgment was reversed. Your Honorable Court granted the petition for certiorari to review the latter judgment.

COUNTER STATEMENT OF QUESTIONS INVOLVED.

Petitioner assumes in its questions presented that respondent was not in the service of the ship at the time of the accident and omits to say that respondent had of necessity to pass over the pier in going to or leaving the vessel. We think the following counter statement of questions covers the issues.

Where a seaman in the course of a voyage obtains shore leave and in passing through the pier, through which he had to go to get to the public highway, sustains an injury through no misconduct on his part, is he entitled to maintenance and cure even though his employer had no control over the pier?

SUMMARY OF ARGUMENT.

Respondent's contentions may be briefly summarized as follows:

FIRST: When a seaman enters into a contract of shipment he surrenders his personal liberty and is subject to the call of duty throughout the entire period of his employment.

SECOND: A seaman is in the "service of the ship", as long as he is subject to the call of duty, and this is so whether he be on shore or on the vessel or whether he be engaged in the actual performance of ship's business or in his own personal matters.

THIRD: Where a seaman falls ill or is injured while "in the service of the ship", he is entitled to maintenance and cure, unless the said illness or injury is due to his own vices or wilful misconduct.

FOURTH: The seaman's vices or wilful misconduct do not remove him from the "service of the ship", since he is still subject to duty, but they constitute a defense to the claim for maintenance and cure notwithstanding that he is in the "service of the ship".

FIFTH: Respondent was subject to the call of duty even while on shore leave, and since he was injured through no misconduct on his part while passing over the pier from his ship to shore, he was injured in the service of the ship and entitled to maintenance and cure.

SIXTH: The injury need not arise from a cause incidental to or connected with the seaman's employment to give rise to the right of maintenance and cure; however even if this were not the prevailing rule respondent would still be entitled to recover because he had to pass over the pier by necessity and any injury so occasioned would be incidental to his employment.

ARGUMENT.

It is conceded by all parties that the right to maintenance and cure arises from the seaman's relationship to the vessel, that is, from his "service in the ship". It is essential therefore to first consider the time during which and the circumstances under which a seaman is in the service of the ship without regard to the right of maintenance and cure.

When a Seaman Enters Into a Contract of Shipment, He Surrenders His Personal Liberty and Is Subject to the Call of Duty Throughout the Entire Period of His Employment.

A seaman is in the service of the ship if he is subject to the call of duty and earning wages as such. *"The Bouker, No. 2"*, 241 F. 831. Unlike any other contract for personal services, the seaman's contract of employment deprives him of his personal liberty during the entire period. He cannot abrogate his agreement and any attempt on his part to do so may result in fines, forfeitures and imprisonment (unheard of in shore employment). His authority to go ashore on leave is only a permissive one which may be granted or denied at the Master's pleasure. The Master may limit the shore leave as to time, place or in any other manner at his discretion or he may revoke the shore leave, once granted, and recall the crew at any time. The seamen are bound to obey whatever commands the master issues whether they may be on shore or aboard. It would present a sad state of affairs if the crew, while on shore leave, were not bound to obey orders. It is conceivable that an emergency may arise aboard ship which might require the presence of all hands, or circumstances might

compel the ship to sail sooner than expected. Were the crew not subject to the call of duty at all times they could refuse to return. The evil of such a rule is especially manifest in a distant or foreign port.

The relationship of Master to seamen was carefully considered by this Court in an opinion by Mr. Justice Byrnes in the case of *Southern Steamship Co. v. National Labor Relations Board*, 316 U. S. 31, 86 L. Ed. 1246. In that case a group of seamen congregated on the after deck of the ship while it was in a domestic port and refused to obey orders in an effort to compel the shipowner to bargain with their union. This court held that such conduct amounted to mutiny even though the ship was in a safe port. In discussing the relationship this Court said (p. 38):

> "Ever since men have gone to sea, the relationship of master to seaman has been entirely different from that of employer to employee on land. The lives of passengers and crew as well as the safety of ship and cargo are entrusted to the master's care. Every one and every thing depend on him. He must command and the crew must obey."

Moreover, your Honors noted that the "shipping articles" prescribed by Congress require the seaman to obey orders on shore as well as aboard (p. 38, 39):

> "But is is worth noting here that the form of the 'shipping articles' which the master and every member of the crew must sign prior to the voyage has been carefully prescribed by Congress, and that these articles contain this promise: 'And the said crew agree . . . to be obedient to the lawful commands of the said master . . . and their superior officers in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, *or on shore* . . .' 46 USCA § 564, 713". (Italics ours.)

The contention was raised that the seaman's obligation was diminished when the ship was in a safe port. Your Honorable Court replied to this that the obligations do not vary with each change of circumstance (p. 43):

> "If further proof be needed of a Congressional belief that the requirements of discipline during a voyage do not vary with each change in circumstance, it may be found in the shipping articles to which we have already referred. For in those articles the members of the crew are obliged to promise to obey lawful commands 'whether on board, in boats, or on shore.'"

Finally, in recognizing the necessity for obedience throughout the voyage it was held (p. 45-46):

> "In any event, a sweeping requirement of obedience throughout the course of a voyage is certainly not without basis in reason. The strategy of discipline is not simple. The maintenance of authority hinges upon a delicate complex of human factors, and Congress may very sensibly have concluded that a master whose orders are subject to the crew's veto in port cannot enforce them at sea. Moreover, it is by no means clear that a ship moored to a dock is 'safe' if the crew refuses to tend it, as the strikers did at Houston. At the very least, steam must be maintained to provide light and fire protection. The damage to the Normandie is grim enough proof that the hazard of fire is ever present."

The learned counsel for the petitioner here was also the successful counsel for the steamship company, the petitioner in that case. Our learned friend in summing up the seaman's status in that case said on page 12 of his brief:

> "When a man puts foot on the deck of a ship, he becomes part of a disciplined organization subject to

> the navigation laws of the United States. He should know that during the term of that voyage he will be required to give up his freedom both while the vessel is at sea and while at any port of call and that during that time he will be subject to all orders of the master."

It is evident as the above quotation expressly shows that the shipowner fully recognizes the status of the seaman as being in the ship's service throughout the employment, and will claim the benefit of this status where it suits his interests. It would be contrary to every sound legal principle to allow the shipowner the benefits of that status without imposing upon him the liabilities flowing from that relationship.

When the seaman enters into the contract of shipment he gives up not only his personal liberty but also all bargaining rights for the duration of the voyage. *Rees v. United States*, 95 F. (2d) 784.

Another unique feature of the seaman's contract is illustrated in the case of *Robertson v. Baldwin*, 165 U. S. 275, 41 L. Ed. 715. There, a number of seamen refused to return to the vessel and the master thereupon caused the U. S. Marshal to arrest and detain them and return them aboard when the ship was ready to sail. The seamen alleged they were unlawfully restrained in violation of the 13th amendment, prohibiting involuntary servitude. This Court held that seamen were an exception to the rule and that the 13th amendment was not intended to cover them. Said the Court (p. 282-283):

> "From the earliest historical period the contract of the sailor has been treated as an exceptional one and involving, to a certain extent, the surrender of his personal liberty during the life of the contract. Indeed, the business of navigation could scarcely be carried on

without some guaranty, beyond the ordinary civil remedies upon contract, that the sailor will not desert the ship at a critical moment, or leave her at some place where seamen are impossible to be obtained—as Molloy forcibly expresses it, 'to rot in her neglected brine.' Such desertion might involve a long delay of the vessel while the master is seeking another crew, an abandonment of the voyage, and, in some cases, the safety of the ship itself. Hence, the laws of nearly all maritime nations have made provision for securing the personal attendance of the crew on board, and for their criminal punishment for desertion, or absence without leave during the life of the shipping articles."

(P. 287-288)

"In the face of this legislation upon the subject of desertion and absence without leave, which was in force in this country for more than sixty years before the 13th Amendment was adopted, and similar legislation abroad from time immemorial, it cannot be open to doubt that the provision against involuntary servitude was never intended to apply to their contracts."

By virtue of the seaman's contract he is in the service of the ship during the entire voyage and he cannot withdraw without exposing himself to the penalties provided by law.

The term of the voyage covers the entire period of employment, as was stated in *Reed v. Canfield*, 20 Fed. Cases, p. 426, No. 11641, at p. 428:

"The voyage of the ship must, so far as the seamen are concerned, be deemed to commence, when they are to perform service on board, and to terminate, when they are discharged from further service."

Nor does a seaman, to be in the "service of the ship", have to be engaged in ships business. In *Ringgold v. Crocker*, 20 Fed. Cas. p. 813, No. 11843, it was held at page 814:

"The service of the ship is by no means limited to acts done for the benefit of the ship, or in the actual performance of seaman's duty on board."

In *"The Bouker No. 2"* (supra), at page 833:

". . . it is enough that he was . . . subject to the call of duty as a seaman and earning wages as such. . . ."

The learned District Judge, in the case at bar, in dismissing the complaint admitted that the seaman is theoretically in the service of the ship even while ashore on his own pleasures, but he went on to say, only upon the ship is this theoretical subjection to call of duty a practical matter (R. 6). Then, realizing the implications which might result from this statement, qualified it by saying (R. 6):

"Of course this is not to be taken as holding that the mere fact that the sailor is physically on shore always puts him outside the service of the ship. There may be circumstances where, *even on shore leave* he is still within the reach of the call of duty, and in such cases it might well be that he is in the service of the ship." (Italics ours.)

In other words if the master or other officers also went ashore and came into contact with a seaman, that seaman was automatically in the service of the ship, but as soon as he went beyond the reach of the master's voice or control he was no longer in the ship's service. We have been unable to find any support for such a conclusion and we submit that it is both unsound and illogical. To carry the finding of the district judge to a logical conclusion it would have to be admitted that if the seaman was in fact not in the service of the ship when he obtained shore leave, he could break his shipping contract merely by absenting him-

self from the vessel. This is of course contrary to every established principle of the maritime law. The test is not whether he can be reached at a particular moment, but whether he is subject to the call of duty, and this statement implies primarily a theoretical subjection to the call of duty. From the practical standpoint a sailor might well make himself scarce and difficult to find even on board the ship. We suggest that if the seaman while on shore leave is in the service of the ship for any purpose, he is in it for every purpose. He cannot shed himself of the obligations arising from that term while on shore leave. If the master instructs him to limit his shore leave to certain territorial limits where he can be reached, it is his duty to obey. If while on shore his leave is revoked or he is otherwise commanded, he has no alternative but to obey. He must obey because his status, as this court stated in *Southern S. S. Co. v. N. L. R. B.* (supra) does not vary with every change in circumstances. By the same token, he is entitled to all the benefits flowing from that status. It would indeed be anomalous to say that he is in the service of the ship with respect to the obligations implied from that term but not with respect to the benefits which may accrue from it.

In the case at bar respondent went ashore with the consent of the master. He was subject to orders and was earning wages while on shore as well as on board ship. His physical departure from the vessel did not alter his relationship to the ship. He was still attached to the vessel as a member of the crew. These are the true criteria which determine whether a seaman is in the service of the ship.

It is now appropriate, having shown respondent to be in the service of the ship even while ashore, to consider the circumstances which give rise to the right of maintenance and cure.

Seamen Are Entitled to Maintenance and Cure for Any Illness or Injury Occurring During the Period of Their Employment.

The seaman's occupation has no real counterpart among shore employees. He travels through every climate, he is exposed to many diseases, as well as extreme heat and bitter cold in different parts of the world. He must experience the fury of storms and heavy seas which the shore worker would find more than merely uncomfortable to say the least. These are but part of the dangers, in addition to the ship's own hazards which are incidental to his employment. In the light of this background the right to maintenance and cure sprang up to safeguard the health of these men. The subject was carefully considered by Justice Story in *Harden v. Gordon*, 11 Fed. Case, p. 480, No. 6047, as follows at page 483:

> "Seamen are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils, and exhausting labour. They are generally poor and friendless, and acquire habits of gross indulgence, carelessness, and improvidence. If some provision be not made for them in sickness at the expense of the ship, they must often in foreign ports suffer the accumulated evils of disease, and poverty, and sometimes perish from the want of suitable nourishment. Their common earnings in many instances are wholly inadequate to provide for the expenses of sickness; and if liable to be so applied, the great motives for good behaviour might be ordinarily taken away by pledging their future as well as past wages for the redemption of the debt. In many voyages, particularly those to the West Indies, the whole wages are often insufficient to meet the expenses occasioned by the perilous diseases of those insalubrious climates. On the other hand, if

these expenses are a charge upon the ship, the interest of the owner will be immediately connected with that of the seamen. The master will watch over their health with vigilance and fidelity. He will take the best methods, as well to prevent diseases, as to ensure a speedy recovery from them. He will never be tempted to abandon the sick to their forlorn fate."

The nature of the duty to provide maintenance and cure is itself evidence of the fact that it follows the seaman on shore as well as on shipboard, so long as his employment continues. As this court pointed out in *Cortes v. Baltimore Insular Line*, 287 U. S. 367, 77 L. Ed. 368 the duty is inseparably annexed to the employment without heed to the will of the contracting parties. In defining the duty the court said (p. 371):

"The duty to make such provision is imposed by the law itself as one annexed to the employment. The Osceola, 189 U. S. 158, 47 L. Ed. 760, 23 S. Ct. 483, supra. Contractual it is in the sense that it has its source in a relation which is contractual in origin, but given the relation, no agreement is competent to abrogate the incident."

Moreover, said the court, the duty is (p. 372):

". . . annexed as an inseparable incident without heed to any expression of the will of the contracting parties."

In considering the continuity of the liability for maintenance and cure the court said (p. 374):

"Here performance was begun when the vessel started on her voyage with Santiago aboard and with care and cure cut off from him unless furnished by officers or crew. *From that time forth withdrawal was impossible and abandonment a tort.*" (Italics ours.)

In the very latest expression of opinion by this court it is settled beyond controversy that the right to maintenance and cure applies as well to illness or injury suffered on shore as on board ship. In *O'Donnell v. Great Lakes Dredge & Dock Co.*, — U. S. — 87 L. Ed. 456, this court had to determine whether the Jones Act which gives seamen a right to damages for negligence, applied to injuries sustained on shore. This court ruled that it did so apply and in so holding drew an analogy to the right to maintenance and cure. The opinion by Mr. Chief Justice Stone shows (L. Ed. p. 460):

> "As we have said, the maritime law as recognized in the federal courts, has not in general allowed recovery for personal injuries occurring on land. But there is an important exception to this generalization in the case of maintenance and cure. From its dawn, the maritime law has recognized the seaman's right to maintenance and cure for injuries suffered in the course of his service to his vessel, *whether occurring on sea or on land.*" (Italics ours.)

Further, Your Honors stated that the right does not spring, strictly speaking, from tort or contract, but is an incident to the employment (L. Ed. p. 460):

> "But the seaman's right was firmly established in the maritime law long before recognition of the distinction between tort and contract. *In its origin, maintenance and cure must be taken as an incident to the status of the seaman in the employment of his ship.*" (Italics ours.)

In this connection a distinction might be made between the right to damages or indemnity and the right to maintenance and cure. In the former, there must be fault or

culpability on the part of the vessel or her tackle or crew. *In the latter the seaman's employment need not be the cause of the injury or illness. Calmar Steamship Corporation v. Taylor*, 303 U. S. 527, 82 L. Ed. 993. In that case, the court by Mr. Chief Justice Stone said (p. 527):

> "The duty which arises from the contract of employment . . . does not rest upon negligence or culpability on the part of the owner or master . . ., *nor is it restricted to those cases where the seaman's employment is the cause of the injury or illness.*" (Italics ours.)

Petitioner argues that it should not be charged with the expenses of maintenance and cure because the accident happened on the pier, over which petitioner had no control. This contention is specifically denied by the foregoing quotation.

In *Loverich v. Warner Co.*, 118 F. 2d 690, cert. den. 313 U. S. 577, 85 L. Ed. 1535, there was involved a malignant disease which manifested itself during the seaman's employment. Said the court (p. 692):

> "If Loverich acquired this malignancy in the throat *while employed* as a seaman for the respondent then the duty of maintenance and cure arises even though it was not caused by anything incidental to his work." (Italics ours.)

A clear illustration of the rule may be found in *Reed v. Canfield*, (supra). There, a number of the crew, including some of the officers, went ashore on leave, as did the respondent in the case at bar. After reaching the shore the officers instructed the men to return within a half hour and then they all dispersed. The men returned to the dock about two hours later and then began to row back to the

ship. They were intercepted by a storm before they could reach the vessel and were carried out into the harbor where one of the men became afflicted from exposure. It was there contended that the men were not in the service of the ship. Justice Story held concerning the maritime law (pp. 427-428):

> "It embraces all sickness, and all injuries, sustained in the service of the ship, and while the party constitutes one of her crew, without in the slightest manner alluding to any difference between their occurring in a home port or in a foreign port, upon the ocean, or upon the tidewaters."

Then on page 428:

> "The voyage of the ship must, so far as the seamen are concerned, be deemed to commence when they are to perform service on board, and to terminate, when they are discharged from further service. The title to be cured at the expense of the ship is coextensive with the service in the ship."

The court accordingly held that the seaman was in the service of the ship and awarded maintenance and cure.

Petitioner tries to argue away the effect of this case by stating that the seamen while returning to the vessel were actually engaged in carrying out orders of the officers and therefore were in the service of the ship. (Pet. brief p. 14.) This contention illustrates the fallacy in petitioner's entire argument. To begin with, all these men including the officers were engaged in a social expedition. If in fact a member of the crew was not in the service of the ship while away from the vessel, it must necessarily follow that he was not subject to orders and the officers would have no authority when outside the service of the vessel to issue orders.

By admitting that the men were in the service of the ship because they were carrying out orders issued to them on shore, and away from the vessel, is to assume that the officers had the authority to issue such orders. This authority could only flow from the fact that the officers were in the service of the ship even though themselves on shore leave and the men had to be in the service if obedience was required. Therefore by admitting the fact for one circumstance is to compel the conclusion that they were in the service for every circumstance. As has heretofore been shown, the seaman's status does not vary with every change of circumstance. We suggest that petitioner's explanation of this case supports respondent's contention rather than its own. The rule was clearly set forth in *The Bouker No. 2* (supra) (p. 833):

> ". . . a seaman 'falls sick, or is wounded, in the service of the ship,' if such misfortune attacks him while he is attached to the ship as part of her crew. It is not necessary that the wound or illness should be directly caused by some proven act of labor; it is enough that he was, when incapacitated, subject to the call of duty as a seaman, and earning wages as such."

A comparison between the stevedore and seaman further illustrates respondent's position as is set forth in *Benedict on Admiralty*, 6th Ed. Vol. 1, p. 61:

> "The stevedore's contract of employment does not contemplate any dominant Federal rule concerning the master's liability for personal injuries received on land. On the other hand a seaman's contract contemplates the application of the general maritime law and that law confers the right to maintenance and cure in case of illness or injury incurred irrespective of negligence, while he is in the ship's service whether such illness or

injury originate on land or upon navigable waters; the seaman's admiralty rights to maintenance and cure have a scope as broad as his employment."

Further discussion on this phase would only be laboring the point. We submit that the following principles may be fairly drawn from the decided and settled authorities:

(1) A seaman is subject to the call of duty on shore as well as on board ship during the entire voyage or period of his employment.

(2) The seaman is in the service of the ship on shore and on board ship during the entire period of his employment.

(3) A seaman who falls sick or is injured while in the service of the ship is entitled to maintenance and cure.

(4) A seaman who is injured on shore during his employment is injured in the service of the ship.

(5) To be entitled to maintenance and cure, a seaman who falls ill or is injured need not show that the illness or injury was caused by some act of labor.

(6) The right to maintenance and cure is not restricted to those cases where the seaman's employment is the cause of the illness or injury.

The application of these principles to the facts in the case at bar clearly shows that respondent was injured while in the service of the ship. However, before determining whether he is entitled to maintenance and cure we must consider certain exceptions to the rule which constitute a defense to the claim notwithstanding that at the time of the injury or illness the seaman was in the service of the ship.

The Defenses to the Right to Maintenance and Cure.

The general rule since time immemorial as has been stated is that a seaman who falls sick or is injured while in the service of the ship is entitled to maintenance and cure. There is however a well recognized exception where the illness or injury is due to the seaman's own gross misconduct or vices. In the *"Alector"*, 263 Fed. 1007, the court, after setting forth the traditional right of the seaman, said (p. 1008):

> ". . . but the right to cure does not include liability for disease arising from their own vices or gross acts of indiscretion."

See also *The Bouker No. 2* (supra); *Reed v. Canfield* (supra); *Ringgold v. Crocker* (supra); *Chandler v. The Annie Buckman*, 5 Fed. Cas. 449, No. 2591a.

The rule was somewhat more amply expressed in defining the extent of the misconduct which will bar the claim, in *"The Quaker City,"* 1 F. Supp. 840. There, the late Judge Dickinson held mere fault on the part of the seaman was insufficient to bar the claim. Said the court (p. 842):

> "There must be in what he did a punitive element with a resultant forfeiture. The phrase in use is in consequence that 'gross misconduct' will forfeit the right to cure at the expense of the ship."

The vices alluded to have been held to refer to venereal diseases. *"The Alector"*, (supra); *Chandler v. The Annie Buckman*, (supra). Wilful misconduct has been held to include intoxication. *"The s/s Berwindglen,"* 88 F. 2d 125; but see *"The Quaker City"*, (supra), where the court in holding the opposite said (p. 843):

> "When the right to cure for hurt and disease became part of the law maritime, 'drunken sailors' were not unknown, whatever the fact may be today, and our finding is that mere drunkenness does not forfeit the right."

It is clear that there must be a wilful act of gross misconduct or vice on the part of the seaman before his claim to maintenance and cure can be barred.

In the case at bar there was no misconduct or vice. The injury was caused by the extinguishment of the lights on the pier. Respondent's claim therefore falls squarely within the general rule and not within the exception.

Petitioner relies on several cases which are in direct conflict with the authorities herein advanced. A brief analysis however clearly discloses the unsound premise upon which those decisions are based.

All of the cases upon which petitioner relies are expressly based upon the decision of *Meyer v. Dollar Steamship Line*, 49 F. 2d 1002 (C. C. A. 9, 1931). This case attempts to introduce a new theory which is an unwarranted extension of the maritime law. In that case a seaman was injured while engaging in a friendly scuffle with a shipmate aboard the vessel. Instead of approaching the problem from the standpoint as to whether or not the friendly scuffle constituted an act of wilful misconduct, the court tried to solve the problem by advancing the theory that the scuffle interrupted his service on the ship. The fallacy of this approach is self evident since it completely overlooks the real test to determine whether a seaman is in the service of the ship, namely whether he is subject to the call of duty. The court reached the conclusion that the friendly scuffle was an intervening act on his part which interrupted

his service on the ship. However, the court went on to qualify the statement by holding that if, while fighting, he was injured by a falling timber or by lightning he was in the service of the ship and would be entitled to recover because it was not his intervening act which caused the injury. This seems to us to be a most illogical conclusion. If the man's service was interrupted by the scuffle then it should not make any difference how the injury occurred. It is apparent that what the Court really had in mind was to determine whether an intervening act on the part of the seaman which caused the injury, was a defense to the claim for maintenance and cure. It is perfectly clear that the seaman's conduct could not alter his relationship to the vessel. There could be no doubt that he was subject to the call of duty whether he was scuffling, sleeping or working. The court also fell into error by comparing the liability for seamen's injuries sustained in the "service of the ship", with the liability for soldier's injuries "in the line of duty", under the war risk insurance act. In the latter case the cause of the injury must be connected with the soldier's duties. In the former case it is beyond dispute that the injury need not be connected with the employment. The inconsistencies in the opinion of *Meyer v. Dollar Line* may be seen from a few excerpts from the opinion. The court recognized that (p. 1003):

> "A sailor cannot, like other workmen, divest himself of all his responsibilities to the company for which he works when his work for the day is done. For that reason, when the courts have been called upon to determine the bearing of the phrase 'in the service of the ship' they have given it a wide range."

It will be noted that the court did not however abide by the foregoing liberal principle for it restricted the term

to the prejudice of the seamen. Further, in considering the facts and suggesting a hypothetical situation the court said (p. 1003):

> "Appellant was off duty and was taking recreation; he was, as all sailors are, subject to call to duty in an emergency and was at the time 'in the service of the ship'. However, when he commenced his good-natured scuffling with his fellow shipmates the situation was changed. Appellant by his own volition created an extraneous circumstance; he brought about an intervening cause that directly affected his relation to his employers and to the ship."

The evil in this statement lies in the fact that it was not his relationship to his employer which was changed, because he was still subject to duty, but only that his claim was affected. Then the court drew an analogy between the seaman's right and the soldier's right to war risk insurance for injuries sustained in the line of duty (p. 1004):

> " 'To illustrate, a soldier in camp may, during a rest hour, be employing his time by working on an invention wholly disconnected with the military service. He is, in general, in the line of duty, but at the moment is exercising a private right for private purposes. An explosion is produced by chemicals which he is using. There has intervened a cause for which he is responsible and the injury is not suffered in the line of duty. But while so employed he is struck by lightning, or becomes ill, or is suddenly stricken with appendicitis, clearly there has been no intervening cause for which he is responsible and the injury is suffered in the line of duty.' "

The court then applied its theory of intervening act to the facts as follows (p. 1004):

"Even if he had been scuffling and the same weight had fallen on his leg, the injury might have been held as incurred 'in the service of the ship'. But the actual case was quite different, for here the injury flowed directly from an intervening cause for which the appellant alone was responsible. Consequently, the injury cannot be held to have been incurred 'in the service of the ship.'"

To begin with, the right to maintenance and cure is not similar to the soldier's right to war risk insurance. In the latter case the injury must be caused by the soldier's duties as the opinion expressly shows (p. 1004):

"In an opinion of the Attorney General concerning the phrase 'in line of duty' as interpreted under the provisions of the War Risk Insurance Act, 32 Ops. Atty. Gen. 12, 20, he said:

"'Was that cause appertaining to, dependent upon, or otherwise necessarily and essentially connected with, duty within the line, or was it unappurtenant, independent, and not of necessary and essential connection? That, in my judgment, is the true test-criterion of the class of * * * cases under consideration. * * *'"

It cannot be questioned that the above rule does not apply to the claim for maintenance and cure because this court has said that there need be no connection between the seaman's employment and the cause of the illness or injury. [*Calmar S. S. Co. v. Taylor*, (supra).]

It seems clear therefore that the court in the foregoing case improperly extended the defenses to the claim for maintenance and cure by adding injuries due to intervening acts to the rule which was restricted to gross acts of wilful misconduct.

The principle to be extracted from the *Meyer* case therefore resolves itself into the following proposition. If the seaman engages in a personal pursuit while off duty, and as a direct result of his own wilful act he is injured, then that act is to be considered as an intervening cause and precludes a recovery of maintenance and cure. If, on the other hand, while engaged in the same personal pursuit, he is injured by some other cause over which he had no control, then his own act was not an intervening cause in his service and he is entitled to recover.

Leaving aside the soundness of this theory for the moment, we submit that its application to the facts in the case at bar entitle the plaintiff to a recovery. The plaintiff was lawfully proceeding through the pier when the lights were extinguished through no fault of his. His injury was caused by the failure of the lights and not because of any act on his part. Even assuming the soundness of the foregoing principle, his claim cannot therefore be denied.

Whether or not we may agree with the result found in the *Meyer v. Dollar S. S. Lines* case, we cannot, however, subscribe to the reasoning upon which the conclusion was based. The very illustration given by the court, of the soldier injured by his own act on the one hand and by an independent act on the other, seems to us to clearly negative the conclusion reached with respect to his being in the service. The fact that he was engaged in the same personal pursuit in both instances makes it illogical to say he was in the service in one, and not in the other. It is undisputed that he was subject to the call of duty and earning wages in both instances. These facts alone place him in the service of the vessel. What the court apparently had in mind was to determine whether such an intervening act

constituted a defense to the claim for maintenance. On this latter basis, the court could have reached the same conclusion without indirectly attacking the problem through the seaman's service. Had the court applied the law as it previously existed, it could have denied recovery upon the ground that the injury was caused by the seaman's wilful misconduct. (Assuming that a friendly scuffle could be construed as an act of misconduct.) The question of service of the ship need not have been raised and need not have played any part in the decision.

We submit, however, that whether or not the reasoning in that case be sound, the facts in the case at bar justify a complete recovery under either interpretation.

Although the *Meyer* case is the foundation for the other cases cited by petitioner it is to be noted that petitioner only mentions it in the briefest of terms without discussing the theory of intervening cause advanced by that case. We suggest that petitioner felt compelled to avoid the basis of that decision because it would have had to admit as we have stated, that the basis for the decision is unsound and without authority, and moreover that even if it were sound it would not have precluded a recovery in the case at bar.

We proceed now with the remaining cases upon which petitioner relies.

In *Collins v. Dollar S. S. Lines*, 23 F. Supp. 395, the seaman went ashore on leave in Singapore and while engaged in a game of baseball was injured. The court held he was injured by a cause which was not connected with his employment and he was therefore not "in the service of the ship". The District Judge then set forth the rule laid down in *Meyer v. Dollar Lines* (supra), as applied to claims by soldiers for war risk insurance, and dismissed

the suit. We submit that if the rule in the *Meyer* case were the law then the decision was correct because the seaman's intervening act caused his injury. However this case likewise illustrates the fallacy of its own reasoning in holding that such an act took him out of the service of the ship instead of determining whether the act was a defense to the claim notwithstanding his being in the service of the ship. Moreover the conclusion reached by the court on the theory that the cause of the injury was not connected with the employment, is likewise clear error as we have shown.

Petitioner next relies upon and quotes at length from *"The President Coolidge"*, 23 F. Supp. 575. This case not only completely ignores the general maritime law but entirely misinterprets the *Meyer* case, upon which it expressly relies. There, a seaman was called from the ship to answer a phone call from his wife on the dock. While ascending the ladder from the ship to the dock he lost his balance and was injured. As will be observed from the excerpt of the court's opinion found in petitioner's brief p. 9, the court expressly relies on *Meyer v. Dollar Line* (supra). The court in dismissing the claim holds, and petitioner emphasizes by italics, that (p. 576):

> *"To entitle libellant to recover he must show that he received his injury while engaged in an act of labor in the discharge of the obligations of his employment."*

By italicizing this statement of the District Judge, petitioner would appear to intend extraordinary significance be given to it. We are reluctant to believe that petitioner has any faith in the accuracy of that statement. It is diametrically opposed to every authority emanating from this court. We have already set forth those authorities and will not therefore repeat them here. Moreover there

is nothing in the *Meyer* case upon which the court expressly relied, to justify such a finding. It must also be noted that a ladder from ship to shore is construed to be an extension of the ship and not the shore. *"The Admiral Peoples"*, 295 U. S. 649, 79 L. Ed. 1633. It would serve no useful purpose to argue further such manifest error.

Petitioner then cites *Smith v. American South African Line, Inc.*, 37 F. Supp. 262. There, a seaman went ashore on leave, and in the course of returning to the ship, when about two miles from the place where the ship was moored, was struck by a motorcycle and injured. In denying the right to maintenance and cure and wages, the court said (p. 263):

> "The matter needs no discussion, the point upon which plaintiff insists having been ruled to the contrary, in the following cases: Collins v. Dollar Steamship Lines, 23 F. Supp. 395; The President Coolidge, 23 F. Supp. 575; Meyer v. Dollar Steamship Lines, 49 F. (2d) 1002."

We submit that the matter needed considerable discussion because neither the *Meyer* case nor the *Collins* case fitted those facts and *"The President Coolidge"* (supra) was so clearly erroneous as to be entitled to no weight whatsoever. The *Meyer* and *Collins* cases both presented facts where there was an intervening act on the seaman's part which caused the injury. Even assuming the soundness of those decisions—which we do not—their findings would not apply because there was no intervening act by the seaman in the *Smith* case.

The same holds true of *Lilly v. United States Lines*, 42 F. Supp. 214, where the seaman, returning from shore leave fell from the dock into the water while searching for

the gangway to the ship. The pier and ship were both blacked out on account of war time conditions. The court denied maintenance and cure without discussion, relying on the *Smith* case just discussed.

The case of *Wahlgren v. Standard Oil Co. of N. J.*, 1941 A. M. C. 1788 (D. C. N. Y.) involved a seaman injured about a quarter of a mile from the pier while going on shore leave. Without discussion the court concludes he was not in the service of the ship, relying upon the *Collins* case, the *President Coolidge* and the *Smith* case just referred to. The arguments we have advanced as to them apply equally to this case.

Next cited by petitioner is *Todahl v. Sudden & Christenson*, 5 F. (2d) 462. This case does not involve any of the causes at issue in the case at bar. The seaman who was injured on the dock sued to recover damages under the Jones Act. The suit was dismissed because the court held that the Jones Act did not apply to injuries on land. Whatever comfort the petitioner might have derived from this decision is now dissipated by the very recent decision of Your Honorable Court in *O'Donnell v. Great Lakes Dredge and Dock Co.* (supra) wherein this court held that the Jones Act is not restricted to injuries on board ship but applies equally well to injuries on shore.

Finally, in the case of *Angco et al. v. Standard Oil Co. of Cal.*, 66 F. (2d) 929, an officer of the vessel, after engaging in a round of golf ashore was returning to the ship by automobile and in the course of this trip he struck and killed certain pedestrians. The personal representatives sued the officer's employer on the ground of agency. The court held that the officer was on shore leave and not on ship's business and therefore there was no relationship of

agency. We submit that this holding is in no sense relevant to the issues in the case at bar.

We suggest, as we believe our analysis of petitioner's authorities shows, that none of those decisions properly interprets the maritime law either as to what is meant by "service of the ship", or the extent of the liability for maintenance and cure.

We submit that under the true admiralty rule the only defenses to the claim for maintenance are those involving gross misconduct and vice on the part of the seaman.

Proceeding Through the Ship's Dock in Leaving or Boarding the Vessel Is Incidental to the Seaman's Employment.

We feel that the facts in the case at bar should be decided on the basis of the general admiralty principles heretofore under discussion. However, there is another feature attached to this type of case which cannot be overlooked. We refer to the fact that the accident occurred on the pier before respondent reached the public highway.

It has already been stated that the causes of the illness or injury need not be incidental to or connected with the employment. *Calmar S. S. Corp. v. Taylor* (supra). Obviously therefore if the injury arose out of a cause incidental to the employment, the requirements of the right to maintenance and cure would be more than satisfied.

Entirely aside of the considerations which have heretofore been discussed, it is also our position that it is incidental to a seaman's employment to cross over the pier, dock or property at which the ship is moored in order to gain ingress to or egress from the vessel. His employment compels him to use that exclusive path and it must there-

fore be construed as a necessary incident to his employment.

Moreover, it cannot be expected that the seamen will board the ship only at the commencement of the voyage and will leave it only after their final discharge. The narrow confines of the ship present little means of diversion, which is a necessary incident to the normal life of any man. Everyone must realize therefore that the seamen should be given every reasonable opportunity for shore leave to break the monotony of the voyage. This is especially true in the case of long voyages to Africa or to the Orient when the seamen may not see land for many weeks. It is for the best interests of the master and the ship that the morale and spirit of the crew be kept high. The most effective means of accomplishing this is by reasonable shore leave. It is therefore not only to be expected, but it should be advocated that the crew go ashore at reasonable intervals.

In leaving or boarding the ship the seaman must pass over a dock or larger property at which the ship is moored. In this connection petitioner argues that there are piers covering many city blocks and considerable territory over which the ship has no dominion or control and therefore it should be excused from liability. (Pet. Brief p. 14.) This would be a forceful argument to a seaman's suit for damages under the Jones Act where there must be fault or culpability on the part of the ship or its owner. No such rule is applicable to the right of maintenance and cure which attaches without regard to fault. Petitioner's argument on this point is therefore wholly irrelevant.

It is of course true that many of the plants at which vessels dock such as oil refineries are not only extensive in territory, but are in themselves hazardous places to pass

through. The seaman must pass through these places every time he boards or leaves the vessel. In many instances the lengthy piers may be in darkness but the seaman must nevertheless pass through to get to his ship. He passes over this property not by choice but by necessity. Piers are a necessary incident to the ship's business and passing over them is likewise incidental. There is no other way to get to or from the ship.

The right to maintenance and cure is infinitely more liberal than the compensation laws applicable to shore workers. Yet the compensation laws do provide a remedy under similar circumstances and furnish some helpful analogy. On this point petitioner contends that under the compensation law of Pennsylvania a claimant is not entitled to recover if the injury was not sustained on the premises of the employer, citing *Maguire v. James Lees and Sons Co.*, 273 Pa. 85; and *Palko v. Taylor-McCoy Coal and Coke Co.*, 289 Pa. 401. Neither of these cases bears on the point here. In the former the accident occurred on the public highway and in the latter upon the premises of a third party over which the worker was proceeding of his own choice and not because he had to. In neither case was there involved the fact that the worker was proceeding over premises where he had to go because of his employment. It might be significant to note that in the latter case the court pointed out that at the time of the accident the worker was not earning wages, and indicated that the Act might cover injuries away from the premises if he were earning wages at the time. Significantly the seaman earns wages during the entire life of his shipping contract aboard as well as ashore, in addition to being subject to the call of duty at all times. However, the Pennsylvania rule with

respect to the necessary use of adjoining premises also compels the payment of compensation for injuries sustained thereon. In *Feeney v. N. Snellenburg & Co., et al.*, 103 Pa. Super. 284, the court said (p. 289):

> " . . . the private street abutting on the employee's entrance to the store building was so used by the defendant as to form part of the premises of its store operations and that plaintiff was within the protection of the Workmen's Compensation Act when she fell."

In other jurisdictions the rule is the same. In the case of *"Re Sunding"*, 105 N. E. 433, it was held that an employee's injury arose out of and in the course of her employment although received after she had left her employer's workroom and while going to luncheon on a stairway not under the control of her employer, nor of the subscriber for whom he was working but which was the sole means of access to the employer's workroom.

In *Judson Mfg. Co. v. Industrial Accident Commission*, 181 Cal. 300, it was held that an injury sustained by an employee while proceeding to the employer's plant by way of a path crossing the right of way of a railroad which was the sole means of ingress and egress for the employees, was one arising out of and in the course of the employment.

A similar remedy is accorded under the English Law. In *John Stewart & Son v. Longhurst* (Eng.), 249 Ann. Cas. 1917 D, a carpenter was employed in making repairs to a barge. After the completion of his day's work, he left the barge and in the darkness he missed his way while passing along the quay and fell into the lock and was drowned. It was held that in the contemplation of both parties he was to use the dock to get to the barge, and that the accident

arose out of and in the course of employment. Said the court:

> ". . . The present case belongs to a class of cases where the thing on which the workman is employed is lying in a dark or other open space to which he obtains access only for the purposes of his work. Actual ownership or control by the employer of the spot where the accident occurred is not essential. The workman comes there on his way to and from his work, and may be regarded as in the course of his employment while passing through the dock or other open space to and from the spot where his work actually lies. Such passage is within the contemplation of both parties to the contract, and is necessarily incidental to it."

In further connection with the work of shore employees, the following situations, while having nothing to do with the work of the employer, have been held to be incidental thereto, and compensable.

Putting on a coat after hours is incidental to employment, and injury in the course of which is compensable. *Hughes v. Olmstead & Tuddle Co.*, Mass. Work. Comp. Case, 1539. Injury in the course of cleaning shoes calls for the same principle, in *Re Campbell*, Ohio Ind. Comm. No. 71569. The visit to a fellow actress' room was a natural and unobjectionable incident of employment. *Bolles v. N. Y. Motion Picture Corp.*, 2 Cal. Ind. Comm. 477 (12 N. C. C. A. 665). A motorman was injured on the street while proceeding to his trolley to work. Walking on the street was held to be an incident of his employment and therefore compensable. *Ketron v. United Railroads of San Francisco*, 1 Cal. Ind. Comm. 528 (12 N. C. C. A. 669-70).

Accidents occurring during a suspension of work ashore, also provide some helpful analogy. In *Robinson v.*

Kahl Construction Co., Ill. Ind. Bd. April 9, 1914, 12 N. C. C. A. 244, in passing upon question whether the injury arose out of and in course of employment the Industrial Board found that during the time the work was suspended, applicant was in respondent's employ, and the mere fact that he stepped from his place of employment on the car on which he was working to the railroad track with other employees and sat down there did not suspend the relation of master and servant between applicant and respondent, and the injury arose out of and in the course of employment. The award was confirmed.

In *Queenan v. Travelers Insurance Co.*, 3 Mass. Workmen's Compensation Cases 525, a waitress in a hotel received her board and lodging and was subject to call there. While arising to go to church she fell out of the window. She was awarded compensation, the court holding that the injury was sustained in the course of her employment.

Recalling that in the case of *Collins v. Dollar S. S. Lines* (supra), the court applied the doctrine of intervening act to a seaman injured playing ball ashore, it is interesting to note that even in shore employment the courts permit recovery for injuries during lawful diversions. In *Conklin v. Kansas City Public Service Co.*, 41 S. W. (2d) 608, a shore employee was injured by a baseball while watching the ball game during his lunch period and was awarded compensation.

As we have stated, the right to maintenance and cure is infinitely more liberal than the right to shore compensation. In connection with the former the seaman is bound to his employment and subject to the call of duty even while ashore. His employment exposes him to diseases, hardships, and privations that few shore employees would

care to encounter. The seaman's neglect or refusal to comply with any order of a superior officer whether aboard or ashore subjects him to drastic penalties. As our learned friend stated in his brief in the case of *Southern S. S. Co. v. N. L. R. B.* (supra), the seaman surrenders his liberty during the life of the voyage. No such obligations or penalties have been, nor in fact could be imposed on shore employees. We think it must necessarily follow therefore that the seaman's rights would embrace all of the liberal interpretations accorded to shore employees which might be applicable.

Seamen pass over the property adjoining their ship not by choice but by necessity. Passage over this property is therefore incidental to the seaman's employment and, as we have stated, more than satisfies the requirements to give rise to the right of maintenance and cure. That right clearly arises from causes which need not be connected with or incidental to the employment.

CONCLUSION.

As a general proposition we think it is clear from the authorities that the seaman is in the service of the ship during the entire life of the shipping contract. He is subject to the call of duty and his wages go on, whether he be engaged in ship's business or personal pursuits. When he joins the vessel he promises to obey all orders, ashore or aboard. He cannot therefore be subject to the liabilities without receiving the benefits of this status. Any injury occurring during the life of his employment contract must necessarily be considered as in the service of the ship. In order to determine whether there be any defense to this right the proper test to be applied is that set forth under the general maritime law prior to the *Meyer v. Dollar Line*

case; namely, was the injury caused by the seaman's own vices or wilful misconduct. If we apply the principle of *Meyer v. Dollar Line*, the defenses are extended to include those injuries which are caused by the wilful intervening act of the seaman himself which is directly responsible for the injury. This extension would seem to be broad enough to cover lawful intervening acts as well as acts of misconduct. We think that the extension of the rule to cover lawful intervening acts was never intended by the maritime law and therefore should not be followed in this court. We take this position despite the fact that the principle of intervening act as unduly extended does not preclude a recovery in the case at bar, there being no intervening act on the part of respondent which caused or contributed to the accident.

It is now settled beyond dispute that a seaman can bring suit for any injury sustained ashore both for indemnity and maintenance and cure. As to the former, there must be fault or culpability on the part of the master before there can be liability. As to the latter neither of those elements is necessary and the right to maintenance and cure arises for any injury, even though the cause is not connected with or incidental to the employment, provided however the injury or illness was not due to the seaman's own vices or wilful misconduct.

We respectfully submit that the decision of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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